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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 223. 62

FREDERICK MYERS, APPELLANT,

vs.

EDWARD C. SMITH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED OCTOBER 2, 1885.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 323.

FREDERICK MYERS, APPELLANT,

vs.

EDWARD C. SMITH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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a *Record.*

U. S. Supreme Court.

FREDERICK MYERS, Complainant and Appellant,
vs.
EDWARD C. SMITH, Defendant and Appellee.

V. Wright Kingsley, solicitor for complainant and appellant; Childs & Hull, solicitors for defendant and appellee.

b The President of the United States of America to Edward C. Smith, Greeting:

[L. S.] You are hereby commanded that you and each of you personally appear before the judge of the circuit court of the United States of America for the eastern district of New York, in equity, on the first Monday in July, A. D. 1882, wheresoever the court shall then be, to answer a bill of complaint exhibited against you in the said court by Frederick Myers, and to do further and receive what the said court shall consider in that behalf, and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Brooklyn, on the 6th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

B. LINCOLN BENEDICT, *Clerk.*

V. WRIGHT KINGSLEY,
Complainant's Solicitor, 15 *Park Row, N. Y. City.*

The defendant is required to enter appearance in the above cause, in the clerk's office of the court, on or before the first Monday of July, 1882, or the bill will be taken "*pro confesso*" against him.

B. LINCOLN BENEDICT, *Clerk.*

V. WRIGHT KINGSLEY,
Complainant's Solicitor.

c [Endorsed:] Vol. 2, page 185. U. S. circuit court, eastern district of New York. Frederick Myers *vs.* Edward C. Smith. *Subpœna ad respondendum.* I hereby depute John Renz to serve this writ. S. R. Harlow, U. S. marshal. Filed and entered July 3rd, 1885.

I hereby certify that on the 7th day of June, 1882, I personally served the within subpœna on the within-named Edward C. Smith by showing to him this original and at the same time by leaving with him a copy thereof.

July 3d, 1882.

S. R. HARLOW,
U. S. Marshal, E. D. of N. Y.

1 Circuit Court of the U. S., Eastern District of New York. In Equity.

FREDERICK MYERS *ag'st* EDWARD C. SMITH.

Frederick Myers, of the city and State of New York, in the southern district of New York, citizen of the United States, resident of said State, brings this his bill of complaint against Edward C. Smith, of the county of Kings, in the eastern district of New York, defendant; and thereupon your orator complains and respectfully shows unto this court—

That Frederick Myers, your orator, was the first, true, and original inventor of a new and useful improvement in machines for trimming wooden boxes not known and used before his application for letters patent therefor, did apply to the Commissioner of Patents for such invention, and having fully and in all respects complied with all the requirements of the law in that behalf, and especially having made oath that he verily believed himself to be the first and original inventor and discoverer of such invention, and also having paid into the Treasury of the United States the sum of thirty-five dollars and delivered a receipt for the same and presented a petition to the Commissioner of Patents setting forth his desire to obtain an exclusive property in the said invention and praying that
2 letters patent might for that purpose be granted to him, and having also delivered and filed in the Patent Office a written description of said invention and discovery and of the manner of using the same, and accompanied with drawings thereto and written references in such full, clear, and exact terms as to enable any other person skilled in the art with which the said invention is most nearly connected to make and use the same, which said description was duly signed by the said Frederick Myers, attested by two witnesses.

And the Commissioner of Patents did thereupon cause letters patent to be made out in the name of the United States of America in the form of law in all respects, bearing date the 26th day of March, 1879, whereby was granted to the said Frederick Myers, his heirs, administrators, or assigns, for the term of seventeen years from the date thereof, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement.

And the said letters patent having been signed by A. Bell, acting Secretary of the Interior, and countersigned by Ellis Spear, Commissioner of Patents, and the said A. Bell, acting Secretary, having caused the seal of the United States to be thereto affixed, and the same having been duly recorded, were issued and delivered unto Frederick Myers, all of which will more fully appear by the said letters patent and the specification thereto annexed, to which your orator prays leave to refer.

And your orator further alleges that a like application in due form was made to the Commissioner of Patents of the United States of America as aforesaid on his petition for letters patent for an invention and improvement in feeding machines for nails not known

or used before, for which he sought letters patent therefor and to which he made oath that the same was new and original, as he believed that he was the first and original inventor thereof, and
3 after complying with all the requirements of the law and paying the usual fee of thirty-five dollars for letters patent into the Treasury of the United States and complying with all the requirements of the Patent Office, in every respect describing said invention so as to enable any person skilled in the art to make and use the same, which specification and drawings were duly signed by Frederick Myers, attested by two witnesses.

And A. Bell, acting Secretary of the Interior, and H. E. Paine, the Commissionre of Patents, did thereupon cause letters patent to be made out in the name of the United States of America in due form of law in all respects, bearing date the sixth day of May, 1879, whereby was granted to the said Frederick Myers, his heirs, administrators, or assigns, for the term of seventeen years from the date thereof, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement.

And the said letters patent having been signed by A. Bell, acting Secretary of the Interior, and countersigned by H. E. Paine, Commissioner of Patents, and the said A. Bell, acting Secretary of the Interior, having caused the seal of the United States to be thereto affixed, and the same having been duly recorded, were issued and delivered unto Frederick Myers, all of which will more fully appear by the said letters patent and the specification and drawings thereto annexed, to which your orator prays leave to refer.

And your orator further shows that after the issue of the aforesaid letters patent the said inventions were put into immediate use by your orator and made and kept for sale, and said defendant has, from time to time, purchased said machines from your orator, and the said inventions are and have been for a long time past in general use and are of great value, and said machines have been extensively sold and used in the United States.

And your orator further shows unto your honors that, since
4 the issue of the aforesaid letters patent, the said Edward C. Smith, the defendant herein, has, within the jurisdiction of the second circuit court of the United States, manufactured, made, sold, and used said inventions aforesaid, and has been so engaged for some time past, as your orator is informed and believes, in manufacturing, making, and using machines substantially like your orator's, as described in said letters patent, the exclusive right to make, use, and vend which is vested in your orator aforesaid, but how many in all your orator is ignorant and has no means of ascertaining and cannot set forth the same in this bill of complaint, and therefore prays that this defendant may discover and set forth the same in his answer to this bill, and hereby said defendant did and does infringe upon the exclusive privileges intended to be secured to your orator by said letters patent and grants aforesaid.

And your orator has requested the said Edward C. Smith to desist and refrain from manufacturing and using and acting for and

in connection with other parties who are engaged in making or manufacturing and using and selling said machines in violation of his exclusive rights, and to account with and pay to your orator for the unlawful use of these said inventions by the said defendant herein.

And your orator further shows unto your honors that he is informed and believes that said defendant does not pretend that he has any right whatever derived from said complainant to make, construct, or use and vend to or manufacture for others to be used said improvements or said machines so improved, or that he has any such right from your orator, nor does he claim any right under any interfering patent so to do.

And your orator submits and insists that said defendant should be enjoined, prohibited, and prevented, both in law and in equity, from making, constructing, or using and vending to others to be used, said improvements or said machines so im-
5 proved in violation of said letters patent; and your orator having thus in a friendly manner requested said defendant to desist and refrain from violating said improvements or machines so improved when your orator had the exclusive right to make, construct, use, and vend to others to be used the same, and your orator well hoped that the said defendant would have complied with your orator's reasonable request, but now so it is, may it please this honorable court, that the said defendant, Edward C. Smith, combining and confederating with other persons, whose names are at present unknown to your orator, but whose names, when discovered, your orator prays may be inserted in this his bill of complaint, with apt words to charge them as parties thereto, to injure and aggrieve your orator in the premises, wholly refuse and decline to stop making, constructing, using, and vending to others to be used the said improvements or said machines so improved, and for justification thereto said confederates pretended that said letters patent, issued as hereinbefore stated, have no force and validity, and that your orator has not the exclusive right to make, construct, use, and sell to others to be used said improvements or machines so improved, and that the said improvements and mode of applying the same were and are new, and that your orator, by virtue of the premises hereinbefore stated, has the exclusive right aforesaid, and said confederates at other times set up and pretend that they have a right, by the laws of the land, to make, construct, use, and vend to others to be used said improvements, notwithstanding said letters patent, because any law prohibiting such right to them is void, the contrary whereof your orator alleges to be true; all which actings, doings, and sayings and pretences are contrary to equity and good conscience and tend to the manifold wrong and injury of your orator.

And your orator further shows unto your honors, upon
6 information and belief, that the said defendant, well knowing that your orator, Frederick Myers, was the first, true, and original inventor of said improvements, and that he had obtained letters patent therefor giving him the exclusive right, use, and

benefit thereof for the period in the said letters patent mentioned, with a fraudulent intent and without the consent and allowance of your orator and against his will, deliberately and willfully commenced to make, construct, manufacture, use, and vend, and does so make, construct, use, and vend to others as aforesaid, machines that are the same in substance as those improved and secured by your orator as aforesaid.

To the end, therefore, that the defendant, Edward C. Smith, may, if he can, show cause why your orator should not have the relief hereby prayed, and may on his corporal oath and according to the best and utmost of his knowledge, remembrance, and belief full, true, direct, and perfect answer make to the several interrogatories hereinafter numbered and set forth, as by the note hereunder written he is required to answer—that is to say:

I. Whether or not said letters patent were granted, as set forth in this bill of complaint, covering said inventions as aforesaid.

II. Whether or not said defendant commenced to make, construct, use, or vend any machine substantially like and identical with the said inventions of your orator, as set forth in this bill; and, if so, state when he commenced to make, construct, use, or sell the same, and when and at what place, and in connection with whom, if anybody, and where was such manufactory or shop, and under whose charge was the same.

III. Whether or not defendant is now engaged in making, constructing, or using or vending any machine substantially like your orator's, as described in his said letters patent, or has been so
7 engaged alone or in connection with any other person; and, if so, state with whom connected, how many have been made or constructed, and at what place were the same made and under whose charge were the same made and constructed or by whose order and direction the same were made.

IV. Whether or not defendant has made or procured to be made any machine used for the same purpose as your orator, and whether they were substantially like his, or in what respect they differed; and, if so, state how many and of what cost they were made.

V. Whether or not defendant purchased any machines, and how many of your orator, and when and whether the same were injured and destroyed by fire or otherwise, and whether said defendant was paid by any insurance company for the loss and injury of said machines or any of them; and, if so, when and how much did he receive therefor and by whom was the same paid.

VI. Whether or not defendant is now using any machines claimed to have been purchased from your orator; and, if so, state how many and how long he had them in use and to what extent they have been remade and repaired, and how many of them have been so repaired, and in what respect has each been so repaired and reconstructed, and by whom was the same done, and when and where was said work done on each machine, and what parts were made new, under whose order and direction was the same done and by whom.

VII. Whether or not defendant has done considerable work or

not since the said fire on his premises with said machines so repaired and reconstructed; and, if so, state for whom, and how much has been done and what he has made thereby, as well as by other
8 machines so used and sold by him since said repairs were made thereon.

VIII. Whether or not defendant has any right to make and use said machines under any patent whatsoever; and, if so, state under whose patent and when required and for what consideration.

The defendant herein is acquired to answer the interrogatories numbered, respectively, 1, 2, 3, 4, 5, 6, 7, and 8.

And that the said defendant may answer the premises, and that he may be decreed to account with and pay over to your orator all such gains and profits and such damages as have accrued or as shall accrue to him from the manufacture, use, or sale of said machines and inventions, and that he may be restrained by an injunction issuing out of this honorable court or issued by one of your honors, according to the form of the statute in such case made and provided, from making, constructing, using, and vending to others to be used any machines substantially the same in construction or mode of operation as such machines described in the said letters patent issued to your orator, Frederick Myers, as aforesaid, and all such machines now in the possession and control of the said defendant and the machinery for making the same may be destroyed or delivered up to your orator, or the proceeds thereof, or for such other and further relief as the nature of the case may require and to your honors may seem meet.

F. MEYERS,
By O. LIGHTOWLER, *Agent.*

V. WRIGHT KINGSLEY,
Solicitor for Complainant and of Counsel.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

On this 6th day of June, 1882, personally appeared before me the above-named Oliver Lightowler, who, being by me duly sworn, deposes and says that he is the agent and business manager of
8½ said complainant in this suit, and that the said complainant is now absent from this country and deponent has possession of said letters patent on which this suit is brought and knows the facts as set forth in said complaint subscribed by him and has made oath to the truths therein set forth, and that the same is true, of his own knowledge, except as to the matters stated to be alleged on information and belief, and as to those matters he believes it to be true.

JOHN A. SHIELDS,
U. S. Commissioner, S. Dis. of N. Y.

Endorsed: Bill of complaint. Filed June 6, 1882.

9 U. S. Circuit Court, Eastern District of New York.

FREDERICK MYERS *vs.* EDWARD C. SMITH.

To the clerk of the circuit court of the United States for the eastern district of New York:

Please enter our appearance as solicitors for the defendant in the above-entitled suit.

Dated N. Y., July 1, 1882.

CHILDS & HULL,
Solicitors for Defendant, 3 *Broad St., N. Y.*

Endorsed: Notice of appearance. Filed July 1st, 1882.

9½ *The Answer of Edward C. Smith, Defendant, to the Bill of Complaint Exhibited against Him by Frederick Myers, Complainant.*

Circuit Court of the United States for the Eastern District of New York. In Equity.

FREDERICK MYERS *against* EDWARD C. SMITH.

This defendant, now and at all times hereafter, saving and reserving unto himself all and all manner of benefit of exception which can or may be had or taken to the many errors, uncertainties, imperfections, and insufficiencies of the said bill of complaint, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, answering, says—

10 I. That, upon information and belief alone, defendant admits that upon application by the complainant letters patent of the United States were issued to the said Frederick Myers on the 26th day of March, 1878, being numbered 201,822, for an alleged improvement in machines for "trimming wooden boxes;" also that upon like application other letters patent of the United States were issued to the said Frederick Myers on the 6th day of May, 1879, and numbered 215,153, for an alleged improvement in "nail feeding machines," but whether any of the provisions or requirements of the law were duly or at all complied with this defendant says he does not know and is not informed save by said bill of complaint and cannot set forth, and leaves complainant to make such proof thereof as he may be advised is material.

II. This defendant, further answering, admits that after the issue of the aforesaid letters patent the complainant made and sold said inventions, and that defendant has purchased said machines from complainant, but this defendant has no knowledge or information sufficient to form a belief as to whether said inventions are or have been for a long time past in general use, or whether they are of great value, or whether said machines have been extensively sold and used in the United States, and leaves the complainant to make such proof thereof as he may deem material.

III. This defendant, further answering, denies that he has ever at

all in any way infringed upon the aforesaid letters patent or either of them, or that he is now infringing upon the same or intends so to do, either by making, using, vending to others to be used, or otherwise the said invention or inventions, as alleged in the bill of complaint, or otherwise within the second circuit or elsewhere; and defendant denies that he has ever contrived to injnre com-
11 plainant or to defraud him of any profits, benefits, and advantages whatever, and denies that he has made any profit therefrom or caused any damage to the complainant thereby.

IV. This defendant, on information and belief, denies that by virtue of said letters patent or either of them the complainant herein became or ever was possessed of or vested with any exclusive right to make, use, or sell in the United States or elsewhere the alleged inventions patented by the said letters patent, and denies that complainant has ever notified defendant to desist from making, using, or selling the same.

V. This defendant, further answering, says that he is advised and therefore avers that said letters patent and each and every part thereof are void and of no effect in law because that the specification accompanying the same is incomplete and ambiguous and is not in such full, clear, and exact terms as to enable any person skilled in the art to which it pertains or with which it is most nearly connected to practice the alleged inventions, and because the said patentee did not therein give to the public the best and uttermost of his knowledge as to the making and using said inventions.

VI. Further answering, this defendant alleges that he is now and has for many years last past been engaged in the business of manufacturing and selling wooden packing boxes in the city of Brooklyn (eastern district), in the county of Kings and State of New York, at which place he has a factory for manufacturing the same.

That at various times within about the period of five years last past complainant sold and delivered to defendant and defendant purchased of complainant and paid him therefor two machines for trimming wooden boxes and nine nail feeding machines, which machines or parts of said machines, with some alterations or modifications thereof, defendant used in his factory aforesaid.

12 That on or about the 26th day of April, 1881, a fire took place in defendant's factory and burned the same, and all of said machines which defendant had purchased of complainant as aforesaid and which were then in defendant's factory (with the exception of one of said machines for trimming wooden boxes) *was* damaged and injured by said fire.

That defendant thereupon caused the same to be repaired and refitted for use, and defendant alleges, upon information and belief, that such repairing and refitting of said machines on defendant's part constitute the alleged act of infringement claimed in the bill of complaint herein.

VII. The defendant, for answer to the several interrogatories propounded in the bill of complaint herein, says:

To the first interrogatory he says: I do not know.

To the second interrogatory he says: I have never made, con-

structed, or sold any machine substantially like or identical with the said invention of the complainant. I have used machines substantially like those described in the complaint and claimed to have been invented by complainant, but they were machines which I purchased of him and paid him for and no others.

To the third interrogatory he says: I am not now engaged in making, constructing, or selling any machine substantially like complainant's as described in his alleged letters patent. I have never been so engaged, either alone or in connection with any other person. I have used and am using now similar machines, which machines I purchased of complainant, as I stated before, and no others.

To the fourth interrogatory he says: I have not made or
13 procured to be made any machines used for the same purpose as complainant's machines nor substantially like his.

To the fifth interrogatory he says: I have purchased of complainant two machines for trimming wooden boxes and nine nail feeding machines at various times during the last five years. All of these machines, except one of the machines for trimming wooden boxes, were injured and damaged in or at the time of the fire which burned my factory in Brooklyn, on or about the 26th day of April, 1881. These machines were not destroyed. These machines, in common with my other property and effects, were insured against loss or damage by fire in various fire insurance companies under policies aggregating some thirty-six in number, for various amounts. My loss and damage from said fire on all my property was duly adjusted and paid for by said insurance companies. The damage and injury done to the machines which I purchased of the complainant were adjusted and paid to me by said companies. I was not paid by any insurance company for the loss or destruction of said machines or any of them, nor were any of the same lost or destroyed. All the machines in my factory, including the machines I purchased of complainant, were insured in bulk, and the damage I sustained thereupon was adjusted and paid to me by the insurance companies in bulk. The companies paid me a gross sum for the damage done to my machinery by the fire. I had a large amount of machinery in my factory. The insurance companies settled and paid my damages on the machines I purchased of the complainant as having been injured and damaged and not as lost or destroyed.

To the sixth interrogatory he says: I am not now using any machines which I purchased from complainant and which have not been repaired by me or by my order.

To the seventh interrogatory he says: After the fire in my premises I did not do considerable work until I had said machines repaired.

14 To the eighth interrogatory he says: I do not know whether or not I have any right to make said machines under any patent. I may have or I may not have. I claim the right to use said machines which I bought of complainant, including those I have repaired and fixed, without any let or hindrance from complainant.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for the defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is not true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

CHILDS & HULL,
Solicitors for Defendant, 3 Broad Street, New York City.

STATE OF NEW YORK, }
City and County of New York, } ss.:

Edward C. Smith, the aforesaid defendant, being duly sworn, says that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

EDWARD C. SMITH.

Subscribed and sworn to before me this 29th day of September, 1882.

J. McG. SMITH,
Notary Public, New York County.

15 At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second judicial circuit, held at the United States court-rooms, in the city of Brooklyn, on the 20th day of December, in the year of our Lord one thousand eight hundred and eighty-two.

Present: The Honorable Charles L. Benedict, district judge, holding the court.

Order.

FREDERICK MYERS *against* EDWARD C. SMITH.

On reading and filing the affidavits of Daniel B. Childs and George Terry, and notice of this motion—

On motion of Childs & Hull, defendant's solicitors, and after hearing V. Wright Kingsley, Esq., complainant's solicitor, in opposition—

It is ordered that the defendant have leave to amend his answer herein by adding thereto as follows:

"Defendant alleges that he is informed and believes it to be true that the said invention and discovery and the same principles and combinations or substantial and material parts thereof alleged to be patented in and by the letters patent mentioned in the bill of complaint were patented by letters patent of the United States granted

and issued to the following persons, at the following times, and prior to the supposed invention and discovery thereof by the
16 complainant herein, as follows, to wit, and are anticipated thereby:

"G. Borgner, January 10, 1872, No. 122,553, apple-parer, corer, and slicer combined.

"W. A. C. Oaks, Dec, 10, 1872, No. 133,796, apple-parer.

"F. W. Hudson, March 5, 1872, No. 124,272, apple-parer.

"W. M. Griscom, May 14, 1872, No. 126,803, apple-parer.

"A. Turnbull & B. L. Webb, June 10, 1873, No. 139,837, apple-parer.

"D. R. Satterlee, Aug. 24, 1869, No. 94136, machine for making slate pencils.

"I. W. Court & C. O. Crosby, Aug. 18, 1874, No. 154,228, machine for making fish-hooks.

"George J. Hill, June 27, 1865, No. 48488, numbering and paging machine.

"I. D. Shelton, July 27, 1875, No. 166,153, machine for assorting pins."

And it is further ordered that the replication heretofore filed by complainant to the original answer may at his option stand and be as and for the replication to the answer as thus amended.

And it is further ordered that if on the final hearing the court shall find that the complainant's patents are void for want of novelty, then defendant is to pay complainant's costs and disbursements of taking testimony up to this time; otherwise not.

(Signed) CHARLES L. BENEDICT.

Endorsed: Order amending answer. Filed and entered the 26th day of December, 1882.

17 *Replication.*

The replication of Frederick Myers, complainant, to the answer of Edward C. Smith, defendant.

To the judges of the circuit court of the United States for the eastern district of New York:

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiency of the answer of the said defendant, for replication thereunto, saith that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready

to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

V. WRIGHT KINGSLEY,
Solicitor for Complainant and of Counsel.

Endorsed: Replication. Filed October 31, 1882.

At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second judicial circuit, held at the United States court-rooms, in the city of Brooklyn, on the 2d day of November, in the year of our Lord one thousand eight hundred and eighty-two.

Present: The Honorable Charles L. Benedict, district judge, holding the court.

FREDERICK MYERS
vs.
EDWARD C. SMITH. } In Equity.

A bill of complaint having been filed in the above-entitled action, and the same having been brought to issue by the defendant filing an answer thereto and the complainant filing a replication to said answer, now, on motion of V. Wright Kingsley, solicitor for complainant, it is ordered that B. Lincoln Benedict, Esq., be appointed special examiner herein to take the testimony offered by the complainant herein under the 67 rule in equity.

CHAS. L. BENEDICT.

Endorsed: Order appointing special examiner. Filed & entered 2nd day of November, 1882.

18 United States Circuit Court, Eastern District of New York.

FREDERICK MYERS *against* EDWARD C. SMITH.

Testimony under the 67th rule, under order of court, on behalf of complainant.

SATURDAY, *November* 11*th*, 1882.

Appear.: V. W. Kingsley, for complainant; Childs & Hull, for respondent.

Complainant's counsel offers in evidence letters patent of Frederick Myers for improvement in nail feeding machines, No. 215,153, dated May 6th, 1879 (marked Exhibit A).

Also letters patent to Frederick Myers, of New York, for improvement in machines for trimming wooden boxes, dated March 26, 1878, No. 201,822 (marked Exhibit B).

Complainant's counsel calls as a witness GUSTAV H. GEORGI, who, being duly sworn, deposes and says:

1 Q. State your name, age, residence, and business.

A. My name is Gustav Herman Georgi; residence, 205 Avenue C, New York city; age, 38; business, pattern and model maker.

2 Q. State for whom you work.

A. For Frederick Myers, the complainant.

3 Q. How long have you been a machinist?

19 A. I am doing work for Mr. Myers since 1875; have been at the business since I was 14 years of age.

(Model produced.)

4 Q. Did you make the model that stands there before you?

A. I made that model.

5 Q. When did you make it?

A. Two weeks ago.

6 Q. For what purpose did you make the model?

(Objected to, and withdrawn.)

7 Q. Were you directed to make it?

A. I was directed to make it to use here in court.

8 Q. Did you made the model which was sent to the Patent Office on which the patent was afterwards granted?

(Objected to by respondent's counsel on the ground that it is incompetent, that model not being here, and that there is no evidence that the patent was granted on it.)

A. Yes, sir; I made it.

9 Q. When did you make it?

A. In the month of December, 1877.

10 Q. After you made it what was done with it?

A. I had to make a box for it, and carried it down to the office, where Mr. Myers was waiting for it.

11 Q. What else was done, if anything?

A. As far as I can tell—it was none of my business—I delivered the box to Mr. Myers

12 Q. Was the box marked for the Patent Office, if you know?

A. As far as I remember Mr. Myers took a marking brush; that is all I can tell.

13 Q. Did you see him mark it?

A. I might have seen it, but I can't tell sure.

14 Q. Do you know it was sent off at that time?

A. I can't say.

15 Q. Will you state if the model here before the examiner is precisely like the model made to send to the Patent Office?

20 (Objected to on the ground that the question relates to something which has not yet been offered in evidence, and that there has been no foundation laid for the question.)

A. Yes.

16 Q. In all respects?

A. In all respects.

17 Q. I will ask you now if that separate piece (indicating) was a part of the model sent to the Patent Office?

(Same objection as to Q. 15.)

A. No.

18 Q. The model that was made to send to the Patent Office was made of wood—the same as this, was it?

(Same objection, and also as leading.)

A. The same as this.

19 Q. You say you have been at work for Mr. Myers since 1875 in making patterns; before he started his own manufacture for whom did you work, and were they employed to make the Myers patent?

A. I was employed by Morgan & Co., 650 East 12th street, New York city; they were doing all the work for Mr. Myers, so far as I know—patterns and models—and at the same time were building machines for him.

20 Q. From the time that Mr. Myers obtained the letters patent on this machine for trimming boxes did you have anything to do with it; and, if so, what?

(Objected to, no foundation for the question, and it is incompetent.)

A. I built the wooden frame and put iron-work on it and set it in working order; ready for work.

21 Q. Have you done that for all the machines of this character made by Mr. Myers or not?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I did.

21 22 Q. Were the machines thus completed by you when you had done with them; were they ready for work always?

A. Always; ready for work always.

23 Q. Do you remember or not Mr. Myers making any of these machines for Mr. Edward C. Smith, of Greenpoint?

(Objected to as incompetent and no foundation laid.)

A. I have no knowledge of it.

24 Q. Please state if the model present here is made in accordance with machines that you have heretofore made for Mr. Myers in its construction.

(Objected to as before.)

A. The first machine was this way—was built the same as the model here; lately we took parts of it off and made improvements by putting other things on.

25 Q. How long ago?

(Same objection.)

A. About three years ago; the first alteration I made three years ago.

26 Q. Were those material alterations in the machine?

(Objected to as incompetent, leading, and as stating a conclusion.)

A. Yes.

27 Q. What alterations were there and when was each made?

(Objected to as incompetent.)

A. The upper part was taken off; the upper guide A A, the upper pieces of the frame, and this upright marked B was connected with the bottom guide C by having cast in one piece B and C instead of being separate; afterwards the whole upper arrangement was taken off, the whole frame A and B, and in place of it at D an extra E was put on, which I now attach without taking off A and B; that was done about a year ago.

28 Q. What office was E intended to perform in the machine——

(Objected to as incompetent.)

22 and what in the machine was it to be a substitute for that then existed in the machine?

(Same objection.)

A. To guide the box right straight before the cutters and the same time press it against the other side.

29 Q. What performed that office before you used E?

A. A loose washer marked F; it was on the spindle G; this was used as a substitute for that.

30 Q. Prior to that what change had been made in the construction of the machine? State just when, if any.

(Objected to as incompetent and immaterial.)

A. Side guides working on springs were all taken away; they are marked on the model H; that was done a year ago; that was the only change on the top; there were other changes.

31 Q. Why was H taken away; was there anything used as a substitute for those side guides?

(Same objection.)

A. The attachment E was used in the place of them.

(Model offered in evidence and marked Complainant's Exhibit Model C.)

(Objected to as incompetent, immaterial, and irrelevant, no foundation for its admission having been laid.)

32 Q. Is the bar E a self-adjuster or not?

(Objected to as before.)

A. It is self-adjusting.

33 Q. Why is it so?

(Same objection.)

A. By a spring attached to the lower hanger I, working on a spindle against bracket K, that constitutes its adjustability.

34 Q. When the washer F was used prior to the attachment E was it then adjustable or not, the same as now?

(Same objection.)

23 A. It was also adjustable, just the same as now.

Cross-examined by Mr. CHILDS:

35 X Q. Were you born in this country?
A. No; in Germany.
36 X Q. Are you in the employ of Mr. Myers?
A. I am.
37 X Q. Do you come here in obedience to a subpœna?

(Counsel for complainant says that he comes at the complainant's request.)
(It is consented that further cross-examination of the witness be suspended, notice of resuming to be sent to complainant's counsel.)

Direct examination resumed:

38 Q. Were the machines all made of wood?
A. Wood and iron; this model is made of wood.
39 Q. And the one sent to the Patent Office?
A. That was made of wood.
40 Q. Can you tell what parts of the machine were of wood and what of metal, indicating by the model?

(Objected to.)

A. All of the model made of cherry wood represents iron, except the pulleys, which are made of ash; the pulleys were iron, too.

H. GEORGI.

Subscribed by the witness before me this 11th November, 1882; and I further certify that the deposition was read over to the witness before signature.

B. LINCOLN BENEDICT,
Special Examiner, etc.

Further hearing adjourned to Nov. 17th, 1882.

24 NOVEMBER 17, 1882.

Hearing resumed.
Same appearances.

JAMES ATKINSON, being called as a witness for complainant and duly sworn, says:

Examined by Mr. KINGSLEY:

41 Q. What is your name, residence, and business?
A. James Atkinson; Occidental Hotel, New York city; purchasing agent.
42 Q. Have you ever worked at machinery?
A. No, never; have sold machinery, but have never worked in it.
43 Q. How long have you been engaged in selling machinery?
A. I have been engaged in selling machinery at various times for the last five years.
44 Q. Do you know Frederick Myers, of 625 Fifteenth St., N. Y.?
A. I do.

45 Q. Have you seen at his place a nail feeding machine made by him?

A. In connection with other machinery, I have.

46 Q. I show you complainant's exhibit. Have you seen a nail feeding machine manufactured like that in Mr. Myers' place?

A. To the best of my judgment, I have seen such an apparatus.

47 Q. Seen it there frequently, have you not?

A. Oh, yes.

48 Q. Are you acquainted with Edward C. Smith, of Greenpoint, the defendant, a box-maker?

A. I am.

49 Q. How long have you known him?

A. From three to five years.

50 Q. Have you recently entered his place of business? And, if so, state if you ever saw or not nail-feeders being used by him as represented by Exhibit A, shown you.

A. I recognize the machine in that position, and as represented in that drawing, figure 3. I cannot say when I went there—within the last thirty days.

51 Q. Did you see Mr. Smith or not?

A. I did, and talked with him.

52 Q. Did you see these machines at that time?

A. I saw one of them.

53 Q. Was it in use or not?

A. It was.

54 Q. Did you see more than one nail-feeder being used at that time?

A. I cannot say that I did.

55 Q. Did you find it difficult to get into his place?

(Objected to as immaterial.)

A. I did not.

56 Q. Did you see boxes being made at the time you were there?

A. Yes, sir; I saw boxes being made, but cannot specify on what machine. It was on the machine that was nearest to me.

Respondent's counsel moved to strike out the latter part as irresponsive.

No cross-examination by Mr. Childs.

JAMES ATKINSON.

OLIVER LIGHTOWLER, called as a witness for complainant, being duly sworn, says:

Examined by Mr. KINGSLEY:

57 Q. What is your name, age, residence, and business?

A. Oliver Lightowler; age, 49; residence, 415 W. 48th St., N. Y. city; business, foundryman and machinist.

58 Q. How long have you worked at machinery?

A. I have been in connection with it eight years.

59 Q. What is your present occupation?

A. Machinist.

60 Q. For whom do you work?
A. For F. Myers, the complainant in this action.
61 Q. Are you his business manager in his absence?
A. I am.
62 Q. How long have you been connected with Mr. Frederick Myers?
A. About six years.
63 Q. Did you have anything to do in connection with the model that was made for the Patent Office; and, if so, what?

(Objected to as incompetent.)

A. I did.
64 Q. You saw the model that was sent to the Patent Office?
A. I did.
65 Q. By whom was it made?
A. By the pattern-maker employed by R. Morgan & Co.
66 Q. And now employed by Mr. Myers, is he not?
A. He is.
67 Q. You were connected with Morgan & Co. at that time?
A. I was employed by R. Morgan & Co.; was the mechanical superintendent.
27 68 Q. Do you know whether that model so made was directed and sent to the Patent Office?
A. I cannot swear whether it went there or not; it was made for that purpose.
69 Q. Was it sent off?
A. It was sent off.
70 Q. As you understood at the time, it was sent to the Patent Office?
A. Yes.
71 Q. Will you look at Exhibit Model C and say whether the model made to be sent to the Patent Office was made like that?

(Objected to as incompetent, immaterial, and irrelevant.)

A. To the best of my belief it is an exact copy, with this bar E off and the washer F on.
72 Q. With that difference it is an exact copy, in your judgment?
A. That answers it.
73 Q. What time was this washer F taken off and the bar E substituted in the making of machines—how long ago?

(Objected to as before.)

A. About a year ago.
74 Q. Do you know Edward C. Smith, of Greenpoint—the box-maker?
A. I do.
75 Q. How long have you known him?
A. About five years.
76 Q. Do you know of Mr. Myers selling him machines called the nail-feeder and the box-trimmer, and, if so, how many, covered by the letters patent in this case?

A. To the best of my knowledge, twelve nail-feeders and two trimming machines.

77 Q. When was this purchase—about when?

A. They were made at different times. The first, to the best of my knowledge, about four years ago; the last, I should judge, about three years ago.

78 Q. You know his place of business at Greenpoint?

28 A. I do.

79 Q. Do you know whether he had a fire there; and, if so, when?

A. They had a fire, to the best of my knowledge, 18 months ago, about.

80 Q. Were those machines all purchased before that fire by the defendant?

A. They were.

81 Q. Have you ever sold them since, or has Mr. Myers?

A. No, sir; he has not.

82 Q. Were you at Mr. Smith's place after the fire?

A. I was there three days after the fire.

83 Q. Will you state about what condition the building was in after the fire?

A. There was no building at all.

(Objected to as before.)

84 Q. Any walls standing?

A. I think one wall stood. I think the outside engine-house also stood.

85 Q. Do you remember whether the building was one or more stories?

A. I think it was three stories.

86 Q. Do you know in what part of the building these machines purchased of Mr. Myers were used before the fire? If so, state.

A. I am not positive; either the second or third story.

87 Q. Did you see Mr. Smith at the time you entered, after the fire?

A. Not at the fire; saw him a few days afterwards.

88 Q. Did you see any of these machines after the fire. And, if so, state what condition you found them in.

(Objected to as before.)

A. I saw eight or ten nailing machines, some parts of them destroyed, but no nail-feeders were to be seen at that time.

29 89 Q. Did you discover any parts of the nail-feeder, broken parts or otherwise, at that time or afterwards. And, if so, state the condition.

(Objected to as before.)

A. I did not see any part of the nail-feeding machine with the exception of the standards, which were connected to nailing machines for the purpose of sustaining the nail feeder.

90 Q. This nail-feeder is simply a part of the nailing machine,

is it not, and Mr. Myers does not claim the nailing machine as such?

(Objected to as before, and leading.)

A. The nail feeding machine is entirely independent of the nailing machine, but is attached to the nailing machine for the purpose of facilitating the manufacture of boxes.

91 Q. And your answer is that you did not see any part of the nail-feeders after the fire except the standards?

A. I saw no other parts.

92 Q. Did you afterwards see any parts of the nail-feeders?

A. I never did.

93 Q. Would the nail-feeder have strength enough to withstand a fall and the heat such as must have occurred at that fire without being destroyed?

(Objected to as before and as assuming a fact not proved in the case.)

A. I do not think they would.

94 Q. State what strength the nail-feeder has—how it is constructed.

A. It is constructed with a base plate about three feet in length, with an extended arm across one end about twenty-eight inches long and four inches wide; a half inch thick; the other portion about eight inches wide and a half inch thick, with three ribs on the under side, for the purpose of giving to it rigidity and strength. Over this base plate a series of cast-iron links in the form of a chain are caused to revolve by means of two small pulleys and two teeth wheels.

The weight of those cast-iron links is about six ounces, and they are about eight inches long and very frail and easy to be broken.

95 Q. Was there considerable machinery? State what amount of machinery was in Smith's factory.

A. I don't know. I remember eight or ten saws and three or four planing machines.

96 Q. Was the building wood or brick?

A. It was of wood.

97 Q. You say you saw Mr. Smith after you entered the works; state if he said anything to you in reference to the fire and the destruction of these machines.

(Objected to as before.)

A. I saw Mr. Smith after the fire; the conversation was general, in which he stated that most of his machinery was destroyed.

98 Q. Did he say anything else?

A. I don't remember; he did not mention any special machines, but that his machinery in general was destroyed.

99 Q. State what part of the trimmers would necessarily be destroyed by that fire if they were in that building.

(Objected to as before and as being hypothetical, supposing a fact not proved.)

A. All this wooden bench and all the belting in connection with the machine would certainly be destroyed; this bar would warp and be useless; the steel spindles would be warped and bent; the springs would be destroyed, and all the adjustable parts of the machine would be utterly destroyed. A few of the castings might remain intact or only partially injured.

100 Q. Did you afterwards or after the fire see any of the machines when they were being repaired? And, if so, state in what condition you saw them or any of them.

(Objected to as before.)

A. I saw none of the machines afterwards except a few portions of the trimming machine.

31 101 Q. What parts of the trimming machine did you see?

A. The two hangers only underneath, marked I; that is all that I saw.

102 Q. Do you know whether the machine was being repaired at the time you saw it; and, if so, by whom?

(Objected to as before.)

A. So far as I can understand, the whole of the machine was being made new with the exception of those two hangers, I.

(Defendant's counsel moves to strike out the answer as being irresponsive and as being only the witness' understanding.)

103 Q. When you saw the machine called the trimmer had it all been made new except the pieces you have mentioned?

(Objected to as before.)

A. It had, so far as I could see.

103½ Q. Where was it being repaired or made new, and by whom?

A. In Brooklyn, by the firm of Smith & Doig.

104 Q. Did you talk with Smith & Doig as to how far they had made these machines new? And, if so, state what they said.

(Objected to on the same grounds, and also as calling for communication with three parties in the absence of the defendant.)

And did they inform you that they were doing the work for Mr. Smith, the defendant?

(Objection renewed, and also as leading.)

A. I talked with Mr. Smith, of that firm of Smith & Doig, who informed me that most of the parts of the machine were entirely new, but that they had built it because E. C. Smith had guaranteed to protect them against any trouble they might get themselves into by so doing.

(Defendant's counsel moves that the answer be stricken out on the grounds above stated.)

32 105 Q. Could you tell by examining that machine as you saw it what parts were old or not; and, if so, what parts were old?

(Objected to as before.)

A. I could; this adjustable bar C was entirely new; the washer F and the steel spindles attached to the hangers I and all the shafts and all the pulleys that I saw were new, as well as all the wooden frame-work.

(Defendant's counsel moves to strike out the answer, and particularly the words "all the pulleys that I saw.")

106 Q. Was the machine as you saw it at Smith & Dorig's completed so as to run or work?

A. Mr. Smith informed me it was, and was ready to be delivered then.

(Objected to.)

107 Q. When was this?

A. I judge about five months ago. I am not positive as to the time.

108 Q. Did you see the machine there more than once?

A. I saw it twice.

109 Q. Were they at work on it both times when you were there or not?

(Same objection.)

A. They were at work upon it both times.

110 Q. Anybody with you?

A. One time Mr. Leech, of the firm of Leech & Brother, was with me.

111 Q. Did you go there for the purpose; for what purpose did you go there?

A. I requested Mr. Leech to go with me to Smith & Doig's for the purpose of examining the trimming machines.

112 Q. Did you ever have any conversation with the defendant in regard to these machines after the fire occurred upon his premises? If you so state, what?

(Objected to as incompetent.)

A. I saw Mr. E. C. Smith and told him that I believed he had rebuilt and reconstructed eight or ten of Myers' nail-feeders
33 and a trimming machine, and that I should commence an action against him at once for infringement.

113 Q. Was this prior to commencing this suit?

A. It was prior.

114 Q. Where did it occur?

A. In Mr. Myers' shop.

115 Q. What did he say in reply?

A. He told me — had been informed that he had a right to rebuild them; that nobody would let him alone about those matters, and I could go ahead with the suit.

116 Q. Are these two machines patented by Mr. Myers used largely in the United States and elsewhere?

(Objected to.)

A. Those machines are used—the trimming machines—in Chicago and several places in Brooklyn, and largely used in England, France, Germany, and Holland.

117 Q. How with the nail-feeder?

(Same objection.)

A. They are used to a much larger extent in all the places before mentioned.

118 Q. Are these patents of large value or not?

(Objected to as incompetent and leading.)

A. I think they are.

119 Q. Do you not know that they are very valuable to Mr. Myers, of your own knowledge?

(Objected to as incompetent, leading, and having no foundation.)

A. I know that they are of large value.

120 Q. Do you know it as manager of his business?

A. I know it as his manager.

(Defendant's counsel moves to strike out answers to questions 118, 119, 120.)

121 Q. Have you had the direction of building his trimmers and nailers, for some time past, as his superintendent?

A. I have superintended building all of them from the beginning.

34 122 Q. Do you remember the two trimmers sold to the defendant?

A. I do.

123 Q. Were they constructed in the same manner as model C or not?

(Objected to as before.)

A. The first machine was a copy of this model, with the exception of the washer F being substituted for the bar E.

124 Q. When did you first use the bar marked E in making the machines?

A. About a year ago.

125 Q. Was that in the machines as sold to Mr. Smith, the defendant?

A. It was not.

126 Q. Did they have the washer F on at that time?

A. They did.

127 Q. Will you state if there is anything in this model, except as you have mentioned, that differs from the trimmers sold?

A. There is no essential difference in the first machine. There might have been a little difference in the second machine in the

mechanical construction, but all the main points of the machine were intact in both machines.

(Complainant's counsel gives notice to defendant's solicitor to produce his licenses to use machines at the next meeting, in accordance with written notice to produce.)

Adjourned to Nov. 24th, 11 a. m.

35 FRIDAY, *Nov. 24th*, 1882.

Hearing resumed.

Both parties appear.

Mr. Hull, for respondent, asks for adjournment on account of absence of Mr. Childs.

Mr. Kingsley opposes and offers to stipulate that all testimony taken to-day shall be subject to any legal objection that might have been made at the time as to each question and answer and witnesses to be cross-examined at the next adjourned day.

(Examination proceeds in the absence of Mr. Hull.)

The licenses called for from the respondent at the last meeting in the absence of respondent's counsel are not produced at this meeting.

Notice to produce, with admission of service, filed with the examiner.

Examination of Mr. LIGHTOWLER resumed by Mr. KINGSLEY:

128 Q. Will you state as to what you know as to the invariable practice of Mr. Myers when selling his patented machines, as marked Patent Ex. A and B, as to the nail-feeder and trimming machines?

A. It was Mr. Myers' invariable practice to give a license to use the said machines; in no case did he give an absolute bill of sale of any of his machines; neither do we at the present time.

129 Q. In what manner does he restrict the sale or use?

A. The license that he gives with those machines is a license to use only, and not a license to sell without his consent.

130 Q. Does he usually keep duplicates of those licenses?

A. He does of all sales.

131 Q. Where is Mr. Myers now?

A. In Europe.

36 132 Q. Have you examined carefully to see if you can find duplicates of licenses to Mr. E. C. Smith? And, if so, state if you found them.

A. I have not examined any of Mr. Myers' business prior to my being employed by him, two years ago.

133 Q. Have you looked over his papers in the office to find any duplicates of licenses to Mr. E. C. Smith for the purpose of producing here or not?

A. I did not look very carefully. I looked over all papers in connection with my business with Mr. Myers, but did not discover any licenses given to E. C. Smith. I may be able to discover them by looking into his business prior to my employment by him.

Exhibit A, patent for nail feeding machine, shown.

134 Q. Were the machines made in an exact accordance with these drawings and letters patent or not?

A. They were; the nail-feeder in strict accordance with those drawings, and no change has been made whatever.

135 Q. Have you known how they were constructed by Myers from the beginning—since the patent issued? If so, state about what time they began to be made by Mr. Myers.

A. I am thoroughly conversant with the construction of those machines, and they were first constructed about four years ago. I have had charge of all their construction from that time, either when made by R. Morgan & Co. or by Mr. Myers himself.

136 Q. When did Mr. Myers begin to make them himself?

A. Two years ago this last June.

137 Q. Do you remember the nail feeding machines which were sold to defendant? And, if so, state whether these machines were or were not made in accordance with the drawings in the patent.

37 A. I remember all the machines that have been made for Mr. E. C. Smith and know they were in accordance with this patent and the drawings.

138 Q. Who was the foreman of R. Morgan & Co. or the machine shop at the time they made machines for Myers?

A. Thomas L. Smith, now of the firm of Smith & Doig, of Williamsburgh.

MONDAY, *November* 29.

Hearing renewed.

Same appearances.

Objections made by respondent's counsel to testimony taken at the last session in accordance with stipulations:

To Q. 128, as incompetent, irrelevant, and immaterial; as leading and assuming a fact not given in evidence.

To Q. 129 the same objections.

To Q. 130 the same objections.

To Q. 132 same objections.

To Q. 134, as incompetent, irrelevant, and immaterial.

To Q. 137 the same objections.

To Q. 138 the same objections.

Cross-examination of OLIVER LIGHTOWLER.

Examined by Mr. CHILDS:

164 X Q. Did you personally send the model to the Patent Office for the trimming machine?

A. I did not; I only saw it in the office of Mr. Myers.

165 X Q. When you say, then, it was sent off you only know that fact from information, do you?

A. I know it from the fact that the model was made for that express purpose and was handed to Mr. Myers to send to the Patent Office. This is my only knowledge that it was sent then.

166 X Q. Did you personally sell to the defendant ever any box trimming or nail feeding machines claimed to have been invented by plaintiff?

A. I never sold him any box trimming machines, personally.

167 X Q. How do you know any were ever sold?

A. Because I superintended their construction, delivered them to E. C. Smith's box factory; frequently saw them running there, and, after being newly attached to the nailing machines, ordered men sent to regulate and adjust them to their work.

168 X Q. Do you know, of your own knowledge, on what terms or conditions any of these machines were sold by Myers to Smith, if at all?

A. I am not acquainted with any of the conditions upon which Mr. Myers made to those sales to E. C. Smith, having no business connection with him other than to superintend the construction of his machines.

169 X Q. Do you, of your own knowledge, know how many, if any, of these two kinds of machines were ever sold by Myers to Smith?

A. I know, of my own knowledge, that nine of those machines used by Mr. E. C. Smith were Mr. Myers' machines, but cannot tell whether those machines had all been bought directly from Mr. Myers or through a third party.

170 X Q. How many of each kind?

A. Nine nail feeding machines and two trimming machines.

171 X Q. When were these machines sold, if you know?

A. I think the first lot was about five years ago, perhaps before, and the last about three years ago.

172 X Q. When you stated in your direct that Mr. Myers sold Smith twelve nail-feeders was that not an error, and should the number not be nine, as you now testify?

A. It was not an error.

173 X Q. Might not complainant have sold respondent machines of the kind in question since the five at Smith's factory and still you not know it?

A. It would be impossible for Mr. Myers to sell any to Mr. Smith since the five without my knowing it.

174 X Q. Would it also be impossible, in your opinion, for Mr. Myers to have sold these machines to Mr. Smith out and out instead of giving merely a license to use said machines?

A. It would not be impossible, but it was Mr. Myers' habit always to give licenses.

175 X Q. Do you mean to say that that is Mr. Myers' invariable custom?

A. When Mr. Myers sells those machines directly it is.

176 X Q. Will you swear that Mr. Myers or those acting for him or any one never sell any machines absolutely instead of giving a license?

A. I could not swear that; those that have been sold through agents—I cannot swear whether the agents give licenses or not.

177 X Q. Except in the case you mention, is it, then, his invariable practice?

A. It is Mr. Myers' invariable practice to give a license for all his machines when sold directly by him to the user.

178 X Q. Were you at the fire which took place at Smith's factory in April, 1881—April 26th?

A. I was there two or three days after.

179 X Q. Do you personally know whether or not any of the machines now in question were actually in Smith's factory at the time of that fire?

A. I know they were there a few weeks before the fire, as I saw them running. Two or three days after the fire I saw the standards attached to the nailing machines to which the nail feeding machines had been bolted.

180 X Q. (Question repeated.) Is that your only answer?

A. That is my only answer, as to my personal knowledge.

40 181 X Q. Does that constitute, also, all your personal knowledge as to whether any of these machines were in that fire?

A. That constitutes all my personal knowledge.

182 X Q. Will you swear that all of the nail feeding machines were destroyed in that fire except the standards?

(Objected to on the ground that defendant *have* admitted that all these machines were in the fire and were injured.)

A. I cannot answer that question; I will not swear they were all destroyed.

183 X Q. Did you personally examine the remains or debris of this fire?

A. I walked over the top of the debris and saw several machines of various kinds in all kinds of injury; some machines had been utterly destroyed.

184 X Q. Who was with you?

A. No one.

185 X Q. What time of day was it?

A. About 11 o'clock in the forenoon.

186 X Q. How long a time were you engaged in looking over the ruins, if you did so?

A. It might have been half an hour; fifteen minutes, I am sure.

187 X Q. Was it not possible for other parts of these machines than those you saw to be lying on the ground?

A. It was possible.

188 X Q. Is it not true, and do you not mean to be understood as saying, simply, that you did not see portions of these machines except those you have named?

A. I meant so; they might have existed—other portions.

189 X Q. Do you personally know that any of these machines fell at the time of the fire or how far they fell?

A. I do not personally know whether they were in the factory at all at the time of the fire.

41 190 X Q. Do you, of your own knowledge, know anything of the heat or intensity of that fire?

A. I do not.

191 X Q. Do you know whether defendant ever used any of these machines after the fire?

A. If I can state what I know of my own knowledge and what I was told, I can answer that question.

192 X Q. Do you know, of your own knowledge?

A. I do not, of my own personal knowledge.

193 X Q. You don't know that any of them ever were destroyed, do you?

A. No; not personally.

194 X Q. At the time of this fire did not Smith have in his factory a machine, patented machine, for printing labels or boxes which he bought of or was patented by complainant?

A. He had a box printing machine which he bought from Mr. Myers, but the machine was not patented by Mr. Myers; Mr. Myers held the right to manufacture.

195 X Q. It was there at the time of the fire?

A. Yes.

196 X Q. Was that printing machine of more or less strength and delicacy of construction than the trimmers and nail-feeders?

A. The printing machine was made all of cast iron, rigid and strong in nearly all its parts, and much less liable to damage by fire than either the trimming machine or the nail-feeders.

197 X Q. Was any portion of the printer made of wood?

A. No portion was of wood.

198 X Q. Were not its parts more delicate in construction and adjustment than those in the trimmer and nail-feeder?

(Objected to as immaterial.)

A. They were not.

199 X Q. Were its parts generally as strong as in the other machines?

42 A. Its parts are stronger in every respect, with the exception of inking rollers, which are supplied to the machine.

200 X Q. When you say that certain parts of these machines, the trimmer and nail-feeder, would be destroyed by that fire if they were in that building, is not that your opinion merely?

A. That is my opinion.

201 X Q. What, in your opinion, constitute the essential parts of the trimming machine?

A. I consider the essential parts to be the adjustable bar marked C, the steel spindles G, the washer F, the self-adjustable bar E, and the wooden frame-work, the whole table—this central belt with stops or carriers; those are the essential parts of the machine.

202 X Q. Are not the cutters an essential part of the machine?

A. The machine cannot work without the attachments; all its parts are absolutely necessary; the cutters are all essential parts of the machine.

203 X Q. Are not the two hangers I an essential part of that machine?

A. In this case they are.

204 X Q. Also the pulleys?

A. I have already answered that all the parts are essential.

Adjourned to Dec. 4th, 1882.

MONDAY, *Dec.* 4, 1882.

Same appearances.

Cross-examination of OLIVER LIGHTOWLER resumed:

204½ X Q. Are not the firms of Reeves & Church, Orr, Fowler & Co., and the Erie Preserving Co. engaged in the same business as defendant?

A. I believe they are all engaged in manufacturing boxes.

205 X Q. In or near this city?

43 A. Reeves & Church are in Brooklyn; the Erie Preserving Company is in Hunter's Point, I believe.

206 X Q. Has not the complainant in this action sold to all of those firms named box-trimmers or nail feeding machines absolutely instead of giving licenses to use within the last three or four years?

A. I am not aware that Mr. Myers ever sold any machines of any description to the Erie Preserving Company, unless it might have been a printer—that is, sold them directly. I can answer better what machines they have than how they bought them. I believe that Mr. Myers sold directly two printing machines to Reeves & Church and sold several nail feeding machines to Orr, Fowler & Co. as well as a printing machine and a trimming machine. All this business occurred before I was in business connection with Mr. Myers, and I know, of my own personal knowledge, that licenses have been given to Orr, Fowler & Co., and I believe to Reeves & Church. I know nothing of the Erie Preserving Co.

207 X Q. Did not complainant sell to the Erie Preserving Co. one or more nail feeding machines?

A. He may have done so, but I think they were bought through a third party.

(Defendant's counsel moves to strike out answer after the words "done so.")

208 X Q. Did not complainant sell to Reeves & Church absolutely one or more trimming machines?

A. I cannot answer; I do not know.

209 X Q. Did not the complainant sell to Orr, Fowler & Co. both trimmers and nail feeding machines during this time?

A. I believe he did.

44 Redirect by Mr. KINGSLEY:

210 Q. When was this sale, last spoken of?

A. I think in the year 1879.

211 Q. During the time you have been with Mr. Myers have the sales all passed through your hands of the two kinds of machines in suit?

A. They have all passed through my hands.

212 Q. Are the sales of machines and attending to the sales part of your business as manager for Mr. Myers?

A. It is a part of my business to attend to all his sales of all kinds of machines manufactured by him.

213 Q. What time was it you became connected with him as manager?

A. In the month of July, 1879.

214 Q. State whether a custom — in the selling the two kinds of machines covered by the patents in this case since you have been employed for Mr. Myers; and, if so, state what that custom is.

(Objected to as incompetent, irrelevant, and immaterial.)

A. Mr. Myers always carefully instructed me to dispose of no machines without giving a license to use the machines; that has been my invariable custom.

(Moved to strike out the answer as irrelevant and immaterial.)

215 Q. Since your connection with him?

A. Yes.

(Same objection.)

216 Q. Has there been any exception to that custom since you have been there as manager? And, if so, state what it is.

(Same objection.)

A. In one or two instances there have been exceptions, such as Mr. Myers' machines being attached to other machinery which had been furnished by other parties; in those cases a license has not been given.

(Same motion to strike out.)

45 217 Q. When sales have been made through agents or third parties has that custom been observed or not; and, if not observed, to what extent has it been departed from?

(Same objection.)

A. In some cases it has been observed; in others it has not; it has depended entirely upon the conditions of the sales made.

(Same motion to strike out.)

218 Q. Can you state how many times since you have been there sales have been made of either of those machines without license to use the same?

(Same objection.)

A. I cannot answer it from memory.

219 Q. As you now recollect, how many have there been and to whom?

A. In one case machines were sold to Malcolm Lloyd, in Philadel-

phia; the machines were sold through third parties. There have been no cases since my connection with Mr. Myers.

(Same objection to question and answer.)

220 Q. Have any of these machines been sold to E. C. Smith through a third party; and, if so, which ones, and when?

(Same objection.)

A. Three of the nail feeding machines have been sold to E. C. Smith through a third party, Joseph Swift; said sales were made in the latter part of 1879.

(Same motion; paper shown.)

221 Q. Do you know the signature?

(Objected to.)

A. Yes; it is the signature of E. C. Smith, defendant in this action.

222 Q. Have you seen his handwriting—have you received letters from E. C. Smith before?

A. E. C. Smith very seldom writes the orders; he signs them. I don't think that order is in his handwriting.

46 223 Q. Do you recollect receiving letters in that handwriting from E. C. Smith since your connection with Mr. Myers?

(Objected to.)

A. No; I do not.

224 Q. Do you know whether Mr. Myers built these machines for E. C. Smith about the date of that letter—built or sold him the machines called for in that letter?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I cannot swear as to the dates; to the best of my belief those machines were built and delivered to E. C. Smith about that time.

(Same motion to strike out.)

225 Q. Was that envelope on it?

A. Yes; the same envelope was on it when I found it. I found it in Mr. Myers' private papers.

(Same objections as before.)

(Paper marked Ex. D. and envelope Ex. D².)

(Objected to by counsel for respondent.)

226 Q. You have stated that you did see the Myers machines in Mr. Smith's place before the fire; please state how many you saw and which kind.

(Objected to as incompetent—as already examined about.)

A. I saw a trimming machine at work and two or three nail-feeders.

227 Q. Did the nail-feeders run in sets, and how many sets were there and how many in each set?

(Objected to as incompetent, irrelevant, and immaterial and as new matter.)

A. In some instances they run in sets of three. They did run in sets in Smith's factory before the fire. I saw three sets running several times, three in each set.

228 Q. About what time was that when you first saw three sets running?

A. I think in the year 1879.

(Same objection.)

47 229 Q. Did you, before a suit against Mr. Smith which was discontinued in June, 1879, see three sets running there or not?

(Same objection.)

A. I saw three sets running frequently before that time. At that time I had full leave to go through Mr. Smith's factory at any time.

(Respondent's counsel moves to strike out the answer, especially the last sentence, as incompetent, irrelevant, and immaterial and as a statement made by the witness not in answer to any question.)

230 Q. Was the sale of the three nail-feeders through Swift to defendant made after the suit in 1879 or not?

A. It was made after the suit had been discontinued.

(Same objection.)

231 Q. What in that trimming machine is the driving or operating mechanism?

A. The driving mechanism consists of the pulleys and shafting either attached to the machine or placed in any other position by which the same result is accomplished.

(Same objection; also as being new matter.)

231½ Q. What part of the trimming machine was made of wood?

(Same objection.)

A. The legs and the table to which the iron-work is attached; the entire framework; the table and its supports; the chute.

232 Q. Which kind of wood in Ex. Model C represents wood in the machine as made?

(Objected to as before.)

A. This dark wood in the model represents wood in the machine. The light wood represents iron in the machine; there are a few exceptions.

233 Q. Were the machines made after the obtaining the patent, and were the machines sold to Smith made in accordance with the present model, Ex. C?

48 (Objected to, as before, in reference to the proportions of iron and wood-work. Same objection.)

A. The first machine that was sold to E. C. Smith was nearly like this, with the exception that the hangers marked L at the rear were made of iron and bolted to the wooden frames.

(Motion to strike out, as before, and as assuming facts not proven in the case.)

Recross:

234 X Q. You didn't sell any machine to Smith after the discontinuance of the suit you have mentioned in 1879, did you?

A. I did not.

235 X Q. How long before the fire was it that you saw a trimmer and two or three nail-feeders, as you say, in Smith's factory?

A. I think it was within a month or two months of the fire.

236 X Q. Will you swear it is within three months?

A. I could not.

237 X Q. Or six months?

A. I will swear within six months.

238 X Q. Does complainant sell his trimming and nail feeding machines at the same price now as before he did prior to your entering his employment, two and a half years ago?

A. I do not know on what terms he sold his machines previous to my employment by him; I know how he sells them now.

239 X Q. Does he sell them now at one uniform price?

(Objected to as incompetent, irrelevant.)

A. He does not.

49 MONDAY, *Dec.* 18*th*, 1882.

Hearing resumed.

Same appearances.

Examination of OLIVER LIGHTOWLER resumed.

Cross-examined by Mr. CHILDS:

261 X Q. Are the knives or the cutters so constructed in the trimming machine that they can be changed at pleasure when worn out?

A. They are so constructed that they can be removed and replaced in a few moments; it is necessary they should be so, on account of frequently requiring sharpening, as well as to put in new ones.

262 X Q. Then I understand you that the knives or cutters in the cutter head may be changed, the cutter head remaining the same?

A. The knives can be changed and the cutter head remain as it is.

263 X Q. Look at Exhibit B, Fig. 4, and please point out on that drawing the cutter head.

A. I have marked it X X on the diagram.

264 X Q. Please point out on the same figure the cutter and state the letter by which it is referred to in the patent.

A. The knives are lettered "*p*."

265 X Q. Is the cutter head a permanent part of the machine as distinguished from the cutter?

A. It is not a permanent part.

266 X Q. In what sense is it not a permanent part of the machine?

A. Because it is constructed of two washers having two slots running parallel to each other, in which the knives or cutters are placed; they are then placed upon the spindle; a washer on the bottom fixed to the spindle prevents them from slipping too far down; a nut is placed on the top of the spindle firmly screwing the two washers together with the knives or cutters between them, thus holding them firmly together. This forms the complete cutter head and knives.

50 267 X Q. As compared with the cutters which may be changed as they become dull or are worn out, is not the cutter head a stable or permanent part of the machine?

A. It is not a permanent part of the machine, but it is not necessary to remove the cutter head while the knives are being changed.

268 X Q. Do you mean it is not permanent because it is possible to change it?

A. I claim it is not permanent because it may sometimes be necessary to change it.

269 X Q. And because it can be changed—that is your reason?

A. Those are my reasons.

Redirect by Mr. KINGSLEY:

270 Q. State if every part of the trimming machine may not be changed by a mechanic when it becomes necessary to replace it.

A. Every part of the machine can be replaced at any time by a mechanic who is capable.

271 Q. Have you known whether the knives wear out before any other part of the trimming machine or not?

A. The knives will be the first to wear out.

272 Q. Have you ever known any knives to wear out, so far, or not?

A. I have known several knives to break, but none to wear out.

273 Q. Have you refreshed your recollection as to what times you saw the Myers machines running in the shop of the defendant? And, if so, state at what times you now distinctly remember seeing them, both before and after the fire.

A. I cannot give any dates. I saw them about two weeks before the fire.

274 Q. Had you seen them before that?

A. Oh, yes—that is, the last time I saw them before the fire.

275 Q. Were they running this last time or not?

A. The machines were then running.

51 276 Q. How did you come to go there on that occasion?

A. The object of my going there was to purchase from Mr. Smith two dressing machines which I knew he had in his possession and not using at the time.

(Defendant's counsel moves to strike out as incompetent, irrelevant, and immaterial.)

277 Q. How do you fix the time?

A. From the circumstances that Mr. Myers was then on a visit to this country and desired to purchase those two machines to take back with him to Europe, we not having time to manufacture them before his departure.

278 Q. Will you state how many of the machines were in Smith's shop when you visited it before the fire, and of what kind?

A. I think there were nine nail-feeders and one trimming machine.

(Motion to strike out as merely opinion.)

A. That is the best of my recollection.

279 Q. State whether you saw any of these machines running after the fire, and how many, and when.

A. In Mr. Smith's place, after it was rebuilt. To the best of my recollection, it was about one month after the factory had been rebuilt. I saw then. on the bottom floor of the building, I think, three of the nail feeding machines running, and a trimming machine.

280 Q. How do you recollect as to the time, and for what purpose did you go there?

A. At that time I was experimenting with a new cutter head and knives, and learned that Mr. Smith had some of the kind I wished to see. I went to the factory and saw Mr. Smith—asked him if he would have any objection to show me the new cutter heads. He told me he had no objections, and showed them to me on the trimmer. I saw them running on the trimmer on the same floor with the nail feeding machines.

52 281 Q. Was anything said between you and Mr. Smith as to whether these machines had been repaired by him?

A. No conversation took place between Mr. Smith and myself at that time in reference to any repairs.

282 Q. Did you examine the trimmer or not particularly in reference to whether it had been repaired at that time?

A. I made no examination of the trimmer itself or of any of the machines, except of the new cutters.

283 Q. Did you buy a set of the same kind of cutters as those used by Mr. Smith, and is it this that refreshers your recollection about that visit?

(Objected to as incompetent and immaterial.)

A. I did buy a set at the time, and this circumstance is what led me to remember the time I was in Smith's factory after the fire and after he had rebuilt.

Recross by Mr. CHILDS:

284 X Q. Do you mean to swear positively that you saw a trim-

mer and nine nail-feeders running in Smith's factory shortly before the fire?

A. I do.

285 X Q. And also swear positively as to seeing these nail-feeders and a trimmer running there after the fire?

A. I will swear as to the trimmer, but will not swear as to how many nail feeding machines I saw, as I was not looking for them.

286 X Q. Do you know that the trimming machine which you saw there after the fire was the identical machine that you saw before the fire?

A. It was not the same machine at all that I saw before the fire.

287 X Q. What machine was it?

53 A. It was one of the two machines which Mr. Smith informed me had not been destroyed in the fire.

288 X Q. Then the machine you saw running after the fire was the one which had not been in the fire?

A. I so understand and was so informed.

289 X Q. Do you know whether the three nail-feeders which you saw running there after the fire, as you say, were the same or a portion of the same machines you state you saw there before the fire?

A. I could not swear they were the same machines; I can only swear they were Myers' machines.

290 X Q. Can you swear that any of those three machines were in or had been through the fire?

A. I cannot swear; I know from information and belief only.

DECEMBER 26TH, 1882.

Hearing resumed.

OLIVER LIGHTOWLER recalled.

Examined by Mr. KINGSLEY:

310 Q. State if this drawing was issued by Myers; and, if so, when, and does it exactly represent the nail feeding machine or not?

Paper shown.

(Objected to as incompetent irrelevant, and immaterial and as leading and as having no connection with the machine used by defendant or the machines which he had purchased from complainant.)

A. It was issued by Myers in 1880, and is a correct representation of the nail feeding machine.

311 X Q. State whether it is a true representation or not of the machines sold to the defendant.

A. It is an exact representation.

(Objected to as before.)

Complainant's counsel offers paper in evidence marked Exhibit E.

54 312 Q. State what is the actual cost of material and labor in building the nail-feeder made by Myers.

(Objected to as irrelevant, incompetent, and immaterial and as being new matter.)

A. The actual cost is $37 each machine, material and labor.

313 Q. When R. Morgan & Co. made the machines for Myers state what they received from Myers for building them new.

(Objected to as before.)

A. Morgan & Co. supplied those machines to F. Myers for $37 each, but they also had an interest of 25 per cent. from the net proceeds of all sales made, the cost of sales being deducted.

(Motion to strike out answer.)

314 Q. Did the cost of the machines made by R. Morgan & Co. exceed $37 or not?

(Objected to as before and as being already answered.)

A. $37 was the price agreed upon as being the cost, and was so arranged between R. Morgan & Co. and F. Myers.

(Motion to strike out answer.)

315 Q. Did R. Morgan & Co. make any profit at that price or did the machines cost them that?

(Same objection.)

A. R. Morgan & Co. made a certain per cent. of profits at that price; it was upon the basis of paying each man $4 a day for his labor on the machines.

(Same motion.)

316 Q. Did R. Morgan & Co. actually pay $4 per day to their men or not; and, if not, how much?

(Same objection.)

A. They did not. The price paid the men at that time was between two and two fifty per day.

317 Q. Was this about the time that Myers sold the defendant these nail-feeders?

(Same objection.)

A. This was about that time.

55 318 Q. State what the material in one of those nail-feeders cost.

(Same objection.)

A. The nail feeding machine weighs 180 pounds; the cost of casting at that time was four cents per pound, making the cost of material $7.20.

(Same motion.)

319 Q. That comprises the whole machine?

(Same objection.)

A. Yes, sir.

320 Q. State whether a machine would cost more or less in May last than that price to build, embracing labor and material both.

(Same objection.)

A. The labor on the machine last May would cost three or four dollars, iron and wages being a little higher, but the cost of material remains about the same.

321 Q. State what would be the cost of making a trimming machine last May—material and work.

(Same objection.)

A. The cost would be about $125.

322 Q. Would there be a manufacturer's profit on the machine at that price?

A. There would be at that price.

323 Q. About how much?

A. About $35. The actual cost of labor and material is $90.

(Motion to strike out as before.)

324 Q. Does Mr. Myers sell his machines at these prices?

(Objected to as before.)

A. He does not; he gets a much higher price.

Recross by Mr. CHILDS:

325 X Q. Did you yourself ever pay Mr. Morgan's men for their labor?

A. I always paid them.

326 X Q. The cost to Mr. Myers of a nail feeding machine was $37 and one-fourth of the proceeds derived from the sales of that machine, was it?

56 A. That was the cost.

327 X Q. Do castings alone compose the material in the nail-feeders?

A. Not quite all. There are a few set screws, about a pound of wire, and about 15 pounds of wrought-iron shaft. The rest are all castings; all but, perhaps, three or four ounces of steel. There are no bolts to the nail-feeder proper.

328 X Q. Is the machine usually painted?

A. The machine is usually painted.

329 X Q. That costs something, don't it?

A. It does.

330 X Q. What does Mr. Myers usually charge and what does he usually receive for these machines now?

A. One hundred and fifty dollars is the price usually charged for the nail-feeders and received. The price of the trimming machine is $450.

Redirect:

331 Q. How much does the painting of the nail-feeder cost?
A. The labor and paint will cost about fifty cents on the nail feeding machine and about one dollar on the trimmer.
332 Q. Aside from the castings on the feeder what would the set screws and wrought iron cost; did you embrace it in your first estimate?
A. I embraced it in my first estimate. The wrought iron would cost about 45 cents; set screws about 50 cents.
333 Q. Is the nail-feeder made of iron entirely or metal?

(Objected to.)

A. It is made entirely of iron.

OLIVER LIGHTOWLER.

Taken and reduced to writing and by the witness subscribed before me this 26th December, 1882.

B. LINCOLN BENEDICT,
Special Examiner.

57 THOMAS L. SMITH, called as a witness for complainant and duly sworn, says:

Examined by Mr. KINGSLEY:

291 Q. What is your business?
A. Machinist.
292 Q. Do you carry on business for yourself?
A. I do; in partnership with William Doig, at 24 Franklin street, Brooklyn, E. D.
293 Q. Did you formerly work for R. Morgan & Co., in New York; and, if so, in what capacity?
A. I did; as working foreman of their machine shop.
294 Q. About what time?
A. About four years.
295 Q. When did you leave them?
A. It will be three years next January, I believe.
296 Q. Did R. Morgan & Co. make trimmers and nail feeding machines for Myers during the time you worked there?

(Objected to as incompetent and immaterial.)

A. They did.
297 Q. Do you know Edward C. Smith, the defendant; if so, how long have you know him?
A. I do; have known him about three years.
298 Q. How long have you been carrying on business as a firm, and what is the name?
A. Smith & Doig; three years next January—immediately after leaving Morgan's.
299 Q. What is the general business of your firm?
A. Jobbing and manufacturing any kind of machine work.

300 Q. Have you ever done, as a firm, any mechanical work for defendant Smith at any time?

A. We have.

301 Q. State what Smith & Doig charged Edward C. Smith, defendant, for work done by them on a trimmer, and when was the work done?

58 (Objected to as incompetent and immaterial and irrelevant.)

A. About $104, as near as I remember—about $40 for material and $63 or $64 for labor; the work was done somewhere about six months ago; bill was rendered May 29.

302 Q. Had your firm done work on the nail-feeders prior to that for the defendant?

A. We did.

303 Q. On how many nail-feeders did you do work?

A. On nine (9).

304 Q. What did your firm charge Mr. Smith for the work done on those feeders—for each one?

(Objected to as incompetent, irrelevant, and immaterial.)

A. The work and material was $361.74; there was $296.80 for labor, $67.94 for material, on nine machines—nail feeding machines.

305 Q. About how much on each?

A. The work was done in a lump; I have no separate account for each machine.

306 Q. Did Edward C. Smith inform you whether these nail-feeders and trimmers on which your firm did work had been purchased by him from Mr. Myers, the complainant, or not?

A. I have no recollection of any conversation in which the defendant said that he had purchased the machines from Mr. Myers.

307 Q. Did you know whether they were machines that had been made by Myers?

A. I knew them to be machines that were made by R. Morgan & Co. for Myers.

Cross-examined by Mr. CHILDS:

308 X Q. Did you ever work for the complainant Myers?

A. There was a time when R. Morgan & Co. went out of business that there was some unfinished work in the shop which was
59 being done for Mr. Myers and another customer; those two hired me to superintend the finishing of their work, each one paying half of my salary; this lasted about three weeks, as near as I remember.

309 X Q. Did you personally have anything to do with making, originally, the machines which, it is stated, Smith bought of Myers and which you say you did some work upon?

A. I did, as being the foreman of the shop for R. Morgan & Co.

Nov. 24, 1882.

Direct examination of ROBERT D. LEECH, called as a witness for complainant, sworn, and examined by Mr. KINGSLEY:

139 Q. Please state your name, age, residence, and business.

A. My name is Robert D. Leech; age, 29; residence, 154 E. 121st street, N. Y. city; business, machinist.

140 Q. How long have you worked at machinery and been familiar with it?

A. About 12 years.

141 Q. Do you carry on business as a machinist or not; if you do, how long have you carried on business for yourself?

A. I am at present employed in running a machine shop at 114 Centre street, New York city, and have been in business for myself during the past eight years.

142 Q. Have you had a large experience in constructing and building machines or not; have you made machines a study?

A. I have.

143 Q. Have you been examined as an expert in patent cases? And, if so, state in what cases.

A. Yes; in a knitting machine case of the N. Y. Belting and Packing Co., as well as in a fluting machine case.

60 144 Q. (Witness shown Ex. A.) Is the device herein described easily made and constructed by any person familiar with the art in that line?

A. In my opinion it is.

145 Q. Have you seen the machines made under that patent by the complainant? If so, state when and where.

A. I have seen machines made under this patent for Mr. Myers, at the machine shop of R. Morgan & Co., in 12th street, New York, about three years ago. I have seen these machines at various times since at the factory of the complainant, Mr. Myers, in E. 15th street, N. Y. city.

146 Q. About what number of machines have you probably seen that were made by Mr. Myers and by R. Morgan & Co. for him?

A. I had occasion to visit the factory of Morgan & Co. at least once a month, and always saw parts of the nail-feeder in course of construction, and occasionally a complete nail-feeder. I have also had occasion to be at the factory of Mr. Myers since Morgan & Co. stopped making these machines, and have seen the same thing there.

147 Q. State about what number you may have seen on these occasions.

A. I have seen machines and parts of machines enough to make at least 10 to 20.

148 Q. Will you now state whether the machines you saw at Morgan & Co.'s and at Mr. Myers' afterwards embraced the device set out in the drawings and letters patent marked Ex. A or not?

A. I never could see any difference, except that the drawing in this Ex. is a Patent-Office drawing, and the machines were probably built from working drawings, and might have been somewhat more

mechanically constructed. The principle was identical with that shown in the patent.

149 Q. In your judgment, were they made in strict accordance with the letters patent or not; and would the drawings exhibit to the court a clear idea of the nail-feeder?

61 A. In my opinion, yes.

(Exhibit B shown witness.)

150 Q. Have you examined this patent and the model marked C?

A. I have.

151 Q. Can you state whether the model C is made in a mechanical point of view in accordance with the letters patent, in your judgment?

A. It is; with the exception that an adjustable bar shown in the model is in addition to a roller formerly used to regulate the depth of each of the cutter-heads; the bar is marked in the model E and the roller F.

152 Q. Is that bar E a mechanical equivalent in that machine for the roller F or not, and is it a substitute for it or not?

A. The adjustable bar E, as now applied, takes the place of the roller or washer F formerly used, and is therefore its equivalent; it performs the same office.

153 Q. Will you state if you have seen a trimming machine at the works of Smith & Doig, at Williamsburgh; and, if so, when, and was it constructed as model C or not?

A. I have seen a machine there about five or six months ago, on two different occasions. The principle was substantially the same and of construction as that shown in this model.

154 Q. Do you remember if that machine embraced washer F or bar E?

A. It had a wrought-iron bar, E.

155 Q. State what the condition of that machine was when you saw it; whether undergoing repairs by Smith & Doig or not?

A. I saw the machine twice. I went there for that purpose, so as to testify in this case, and informed Messrs. Smith & Doig that such was my business there. The first time I saw the machine all the parts appeared to be complete; there was some little finishing to be done. The second time I saw the machine, a few days after,

62 it appeared to be finished, and I was informed that such was the fact by them.

156 Q. State what you know in reference to its having been repaired or rebuilt, so far as you can.

A. I was informed that the machine or some pieces of it had been in a fire at the box factory of E. C. Smith, and that he had ordered the machine to be overhauled so that he could use it again. The frames of these machines are constructed of wood. In the machines I saw there the frames and tables were all new; the old ones had been burnt up. All the parts of the machines I then saw undergoing what was called repairs for Mr. E. C. Smith were new, with the exception of the two castings called hangers and marked I in the model C, which, being heavy castings, had not been destroyed in

the fire. I not only could see that all of the other parts of the machine was new, but I was informed by Smith & Doig that such was the fact. I was particular to ask them to point out to me what parts were saved from the fire and were used in the construction of this new machine. The two hangers before mentioned were the only parts so pointed out. The belts necessary for driving the machine were not on at this time nor are they usually put on machines of this class until they are about to be run, as almost any mechanic can put on a belt and it is not necessarily a part of the machinist's work in constructing a machine. The chute shown in the model and shown in the patent at H was not the same in this machine, and I was informed that, owing to a peculiar arrangement of the machinery in the box factory of E. C. Smith, a very long table or chute was used in its place. This chute, however, simply is as a hopper to a mill; boxes could be fed in by hand and the machine would turn them without.

157 Q. Did the change in that chute, in your judgment, perform the office of H in the patent or not, and was it substantially like it in the construction of the machine?

63 A. It was an equivalent of the chute shown in the model and patent, and was arranged to do the same office.

158 Q. State if you were made acquainted with the fact whether this machine that you saw was made by Myers; and, if so, for whom, and whether it was being reconstructed for the owner at that time.

A. I was informed by Smith & Doig that E. C. Smith had purchased the machine, or what was left of it, from Mr. Myers originally. They also informed me that this work was being done for Mr. E. C. Smith, a customer of theirs.

159 Q. Did they say anything as to whether they were to be protected in doing the work; and, if so, by whom?

A. I remarked that the machine was not being repaired; that there was nothing to repair; in fact nothing left but the pieces of castings, and that everything else upon the machine was being built new, and that Mr. Myers intended to sue for infringement of his patent rights. Smith & Doig informed me, in answer, that if they didn't do the work Mr. Smith could easily get some one else to do it; and, further, that he had agreed to protect them against any losses they might incur by reason of being sued by Mr. Myers.

160 Q. State if they informed you anything about the device embraced in this nail-feeding machine—if they had made repairs in the machines for anybody. And, if so, for whom?

A. I was informed by Smith & Doig that several nailing machines had also been more or less injured and destroyed by the same fire, and that they had repaired these machines, as well as the Myers' patent nail-feeding machines, or attachments to the same, and that the question had come up in regard to their having a right to do this work in consequence of Myers having patents on the same, but that having taken legal advice upon the same, they were informed that they were safe in doing the work, and went on and did it.

64 161 Q. Did you learn from Smith & Doig whether they had made any parts of the nail-feeders new, or what they did to the same, or not?

A. They did not tell me all of what was done to their nail-feeding attachments any more than that some parts were missing, broken, or warped, as would be likely after having been through a fire.

162 Q. Will you state what is, in your opinion, repairs, properly called, in a machine? I ask your mechanical explanation.

A. In my opinion, if a piece of casting, for instance, is broken and can be patched together, the part is then repaired, but if the part is so broken that it cannot be so mended, then a new piece has to be substituted. This I consider building. A piece once destroyed can never be repaired; a new piece being substituted certainly does not repair an old part, whether destroyed or not. If the old part is still in existence you have then two parts, and if you kept on repairing in this style you would eventually have two machines, a new one and an old one. If the part was destroyed and you replace it you certainly rebuild any machine in so far as that part goes.

163 Q. State at what point you make a distinction between repairs and rebuilding of a machine.

A. When a machine, as, for instance, a frame, by reason of a fall, such as might occur in moving or the fall of a building by reason of a fire, as in this case, is broken, and a wrought-iron plate is riveted on to join the parts as they were originally, the piece is then repaired; but when the piece is broken so badly that it cannot be so repaired, and a new one is substituted, I then call it rebuilding.

ROBERT D. LEECH.

Taken and reduced to writing and by the witness subscribed and sworn to before me this 24th November, 1882.

B. LINCOLN BENEDICT,
Special Examiner.

Adjourned to Wednesday, Nov. 29th, 1882, at 11 a. m.

65 MONDAY, *Dec.* 11, 1882.

Hearing resumed.
Same appearance.

ROBERT D. LEECH recalled.

Examined by Mr. KINGSLEY:

240 Q. Look at the model, Exhibit C. Would you regard the standards A A and the spring connected at the top as necessary to the operation of this machine?

(Objected to as irrelevant and immaterial.)

A. I do not consider the frame marked A in the model, and supporting the upper guides and self-adjusting springs, as being essentially necessary to the working of these machines, as the weight of

the box has a tendency to keep itself from raising from the driving belt. The knives only cut on the sides, and therefore have no tendency to raise the box, being trimmed from the feeding-belt.

241 Q. Do you regard the washer F and the bar E mechanical equivalents or not?

A. I believe I have already answered that question—yes.

242 Q. State, in your opinion, what injury these machines would be likely to suffer in passing through a fire such as described here by Mr. Lightowler?

(Objected to as incompetent and irrelevant.)

A. In my opinion, — a machine constructed like these nail-feeders were, the chain would be likely to be injured by being warped by reason of the fire and broken in case the machine fell through a building, as this chain, and, in fact, the whole nail-feeding attachment, has no great strain upon it in consequence of the work it has to perform, and is, therefore, not very heavily constructed, the links being of cast iron and not intended to withstand any other strains than the simple carrying of a nail to the nail-drivers of the machine.

66 In regard to the trimming machine I think I have already stated that, the frame being of wood and the machine being used for wood-working and in a factory where there would probably be a quantity of lumber stored in the building and around the machine ready for work upon the same, it would be very likely to be very badly injured if not entirely destroyed.

Cross-examined by Mr. CHILDS:

Respondent's counsel, before proceeding to cross-examine, makes objection, under stipulation, to questions—

142, as incompetent and leading.
146, as incompetent, irrelevant, and immaterial.
147, same objection.
148, same objection.
149, same objection.
150, same objection.
151, same objection.
152, same objection.
153, same objection.
154, same objection.
155, same objection.

Motion to strike out answer to question 155, particularly those portions stated upon information.

To question 156 the same objection and the same motion as to the answer thereto.

To question 157 the same objection.

To question 158 the same objection and the same motion as to the answer thereto.

To question 159 the same objection and the same motion as to the answer thereto.

To question 160 the same objection and the same motion as to the answer thereto.

To question 161 the same objection and the same motion as to the answer thereto.

67 To question 162 and 163, objections as incompetent.

243 X Q. Have you ever testified before as an expert in a case where the question as to whether a machine has been repaired or refitted for use or whether it has been destroyed has arisen?

A. No.

244 X Q. Was any one present at the time or times when you say that you saw in the shop of Smith & Doig the machine—the trimmer—in process of refitting?

A. Yes; Smith & Doig were with them as well as Mr. Lightowler. I remember this very well.

245 X Q. Have you stated all who were there?

A. There were some workmen around the shop. Part of this conversation took place in a saloon where we were taking a drink.

246 X Q. Who was taking a drink? Who was present?

A. Smith, and Doig, and Mr. Lightowler, and myself were all there talking together.

247 X Q. Did you see at any time any nail-feeder which was either being repaired or had been repaired at Smith & Doig's?

A. I have seen some parts of nail-feeders in their shop.

248 X Q. When and what parts?

A. About this same time I saw some of the links lying round; that is all I saw of nail-feeders; I was not looking for them; only saw them casually.

249 X Q. Then you do not know what parts of the nail-feeders, if any, were either injured or destroyed, repaired or rebuilt; is not that so?

A. Mr. Smith told me so, and I believe it. Smith, of Smith & Doig.

(Respondent's counsel moves to strike out answer as irresponsive.)

250 X Q. (Question repeated.)

A. I do not mean to say that I saw them. I was speaking before of what I believed.

68 251 X Q. Do you mean to swear that only two pieces of casting, being the hangers on the trimming machine, constituted the only parts of that machine saved from the fire and which went into the machine that was refitted, as you say, by Smith & Doig?

A. The hangers were the only parts that looked as if they might have been in another machine. There was some question about the spindles that these hangers support being new. I said they looked new, but was informed by Messrs. Smith and Doig that they had been polished up.

252 X Q. Did you see the knives—the cutters—or were those destroyed?

A. I do not include knives when I speak of a machine; there probably was more than one set of knives to such a machine.

253 X Q. What do you regard as the essential parts of that trimming machine?

A. I regard all the parts of a machine as being essential to its working, although some of the parts, such as cutters, are liable to be worn out, and are not considered as part of a patent usually in machines of this class.

254 X Q. Assume that some parts of the machines are destroyed and are replaced, is that repairing a machine or rebuilding, in your opinion, as a machine?

A. My opinion is that a machine or any article that is so worn out or destroyed that the combinations or claims upon the same in case it is patented are destroyed is then beyond repair.

255 X Q. May not new parts be made in a machine and still be only a repair?

A. Some parts may be repaired in a machine.

256 X Q. May not some essential parts of a machine which have been injured or destroyed be replaced by new parts and the machine then be repaired?

A. Yes; a bolt or a screw may be essential and a new piece being substituted might be called a repair. We repair an old shoe by putting a new half sole on it, but new uppers are not put on old soles.

69 257 X Q. Suppose, in addition to putting a new half sole on the shoe, new leather is put upon the toe, new heels are put on the shoe, and new leather is made in the form of various patches upon the shoes, in your opinion is such a shoe repaired or rebuilt?

A. When I referred to resoling an old upper I supposed, of course, an upper that was burnt up or destroyed, such as happened to the machine in question. Then no such repairs as you speak of would be likely to take place. A part once destroyed cannot be repaired; it is replaced, and replacing an article certainly is rebuilding.

(Motion to strike out as irresponsive.)

257½ X Q. (Question repeated.)

A. If you put on leather enough to make the shoe as good as new you rebuild or reconstruct, for the reason that there is no object in keeping old pieces, either of a machine or a shoe, when you replace them with new ones.

258 X Q. Do you hold, then, that a machine some of whose essential parts have been made new is thereby not repaired, but is reconstructed?

A. In some cases, yes; especially when there is nothing of consequence to repair.

259 X Q. Without considering whether it would pay to do it or not, is it not true that the subject of repairing an article is one which belongs very much to the judgment and discretion of the owner?

A. I do not understand what you mean by the subject of repairing. I suppose an owner can do what he likes with his own property.

260 X Q. Is not one person apt to buy a new article where another would only repair, and *vice versa?*

A. It would depend on whether they had some special reason for doing either.

70 THURSDAY, *July* 9, 1883.

ROBERT D. LEECH called for the complainant in rebuttal.

Examined by Mr. KINGSLEY:

1 Q. Look at Ex. B, patent of Myers' box-trimmer, No. 201,822, and at the 8th claim thereof, and state what are the mechanical parts and how many you find in that claim.

(Objected to as incompetent and that the patent speaks for itself.)

A. I find in the 8th claim a supporting frame, a table chute and guards, self-adjusting cutter, a carrier, self-adjusting guides, and driving mechanism, making nine in all. There are nine mentioned here, some of them comprising more than one part, as the guides, for instance.

2 Q. Are there nine distinct mechanical parts in Myers' machine which appear in the 8th claim?

(Same objection.)

A. Yes.

3 Q. What are the leading and most essential parts of the Myers' box-trimmer?

A. First, a supporting frame and table having a chute and guards, a self-adjusting cutter and an adjustable cutter, carrier, and self-adjusting guides; second, the necessary driving mechanism; third, the whole arranged in combination so as to work properly.

4 Q. Look at Complainant's Ex. Tags 1 to 6, pieces of the box-trimmer saved and used by defendants in repairing, and state whether you could assemble these parts and refit them so as to make a working box-trimmer like Myers' machine or not.

(Objected to as incompetent.)

A. I could not.

5 Q. Will you state whether the six exhibits, 1 to 6, are the most important parts or not of the Myers' machine and invention as claimed in the 8th section of the letters patent, and state
71 what portions are embraced in that claim, if any—what portions of the same, if any of them?

(Objected to as before.)

A. The only parts shown in the Exhibits 1 to 6 that form any part of the 8th claim are the two adjusting boxes or supporting boxes for holding one end of the carrier, Nos. 3 and 4. These two boxes are not the most important parts of the machine or of the combination claimed in the 8th claim of the patent.

6 Q. Are they named as such in the 8th claim of the patent or embraced mechanically in that claim?

(Same objection.)

A. They are not mentioned by name in the claim, but a carrier is mentioned, and these boxes as the machine is constructed form a part of what supports the carrier.

7 Q. Do you find in any of the claims of the patent any other portions of these Exhibits, 1 to 6?

(Same objection.)

A. I do not by themselves.

8 Q. Are they embraced in any way in those claims if not named? If so, explain how.

A. They are embraced only in this way, that the two boxes Nos. 3 and 4, as I have stated, form a part of the machine by being used to support the carrier and the two hangers Nos. 5 and 6 and pulleys Nos. 1 and 2, and form a part of the supporting and driving mechanism for the self-adjusting and adjustable cutters.

9 Q. State whether these pieces, Nos. 1 to 6, and representing the parts of the Myers trimmer that were saved from the fire and used in refitting said machine, with all the other parts of said machine made new by the usual process of drawings and castings and then assembled together, would constitute, in your opinion, the identical machines sold by Myers to Smith and which was injured by the fire, or would it be a repaired or reconstructed machine, in your judgment.

(Same objection.)

72 A. The pieces 1 to 6 do not form a machine in themselves, and, therefore, as it would be necessary to add new parts in order to make a complete machine, the machine thus constructed is not the same old machine, but a new machine with some old parts used in its construction; so that I do not consider the machine built by Smith & Doig for E. C. Smith the same machine as the one sold by Myers to E. C. Smith before the fire.

10 Q. Would you regard a machine thus made with these representative parts saved from the fire a repaired machine or reconstructed?

(Same objection.)

A. I should call it building a new machine.

11 Q. In your opinion could these representative parts be placed in a repaired machine where all the other parts of the Myers box-trimmer were made new and be justly denominated a refitting and repairing of the same, mechanically speaking, or otherwise?

(Same objection.)

A. It certainly could not be called a repaired machine, as there was no machine left to repair after the fire. The parts 1 to 6 do not constitute a machine, so a new machine had to be built.

12 Q. Do these parts so saved and representing the parts saved of the Myers machine, in your opinion, embrace the vital parts of the Myers machine or invention or not?

A. Myers' invention is so simple that all the pieces are necessary, so that these parts are not necessarily more vital than any other part.

13 Q. Do you find them named as essential parts in that invention, as claimed in the letters patent, as they appear or not?

(Same objection and as already answered.)

A. They are not mentioned by themselves, but become necessary in constructing the combinations claimed in the patent.

14 Q. Do they of themselves form any perfect element, as
73 set forth in the letters patent, or are only parts of such element es are named in the patent?

(Same objection.)

A. They are only parts.

15 Q. Looking at Complainant's Exhibit A, patent No. 215,153, and at complainant's exhibits embracing the nail-feeder and its connections, state if the endless chain and the bed plates and the cross-bars and the conduits and springs in the front of the receptacles were substantially broken up, and the endless chain and bed plate with the other parts had to be recast by the usual process of moulding, and one-third of the conveyors were used in repairing or refitting; could that machine, so injured and so refitted, be, in your opinion, a repaired machine or not?

(Objected to.)

A. In my opinion, when the greater portion of a machine is destroyed and renewed, so as to make a new machine, it is rebuilding; were it not, you could build two new machines out of some of the parts of one old one.

16 Q. Have you read the testimony of Thomas L. Smith in this suit, in reference to what his firm did in regard to the repairing of the Myers' nail-feeder and alse the box-trimmer?

A. I have.

17 Q. Will you state if, in your opinion, assuming all his statements to be true as to the condition of the machinery and what was done to reinstate it, you would call these machines so refitted repaired machines or reconstructed machines?

(Objected to as before.)

A. As I understand his testimony, nothing was repaired; new machines were built for which drawings, patterns, and castings, as well as a new frame-work from the carpenters, all had to be made exactly as is done in building any new piece of machinery. There was not enough of it left after the fire for Smith to even tell what the machines had been like when new, and he had to go to
74 the factory and make drawings of the different parts and the arrangement of the whole, although he had built these ma-

chines some years before, and the only difference between the machine he produced and a machine such as Myers would build in his factory was that a few of the parts that were so heavy they were not entirely destroyed by the fire were substituted in place of making the machines entirely of new parts; my judgment certainly is that this was building new machines, the same as building a new house with some second-hand material in it.

18 Q. Assume all the parts were made new by casting and moulding, could that in any sense be denominated repairing or not?

(Same objection.)

A. It could not; a casting can only be repaired by being patched together; but that was not done in this case.

(Question and answer to question 336 and question 337 and answer of testimony of Thos. L. Smith read.)

19 Q. Is that a process used in repairing or a process used in rebuilding machinery?

(Same objection.)

A. It is rebuilding.

20 Q. (Questions 338, 339, 340, 341, 342, and their answers read to witness.) State what is thus described, whether repairing machines or rebuilding them?

(Same objection.)

A. As the parts were made new and not repaired, I can only call it rebuilding.

21 Q. (Questions 343, 344, 345, 346, and their answers read to witness.) State from those answers whether that contains the process of rebuilding or repairing these machines?

(Same objection.)

A. As I have stated before, it was rebuilding, using some old material.

22 Q. (Questions 347, 348, and answers read.) State what
75 these answers describe in the process of repairing or reconstructing the box-trimmer that was injured by the fire?

(Same objection.)

A. They describe rebuilding it.

23 Q. Do you regard the use of old material which is saved from any machine as determining one way or the other whether it was repaired or reconstructed, or may such material be used in repairing or reconstructiing machines alike or not?

(Same objection.)

A. New machines can sometimes be made out of old material, and it is quite common in machine shops in building a new machine to use any good second-hand material that they happen to have.

24 Q. What do you call making a new machine, mechanically speaking?

(Objected to as incompetent and already answered.)

A. Inventing, designing, and making patterns, getting castings made at the foundry, sometimes, as in the box-trimmer, getting wood-work at the carpenter's, getting bolts and screws from a hardware store, and assembling the whole together, fitting the different parts so that it shall run well together and do the work intended.

25 Q. What do you call a repaired or refitted machine, mechanically speaking, and as distinguished from a new machine?

(Same objection.)

A. Taking a worn or injured machine, and by refitting the same old parts, and possibly supplying something like a broken bolt or rebabbitting a box, sharpening up knives, repolishing, painting and adjusting, I should call repairing a machine, as the old machine is still there, only put in good condition.

(Questions 448, 449, 450 read to witness, and then answers; also 451 and 452.)

76 26 Q. In the description in those answers do you regard that second box-trimmer as a repaired machine or not?

(Objected to as incompetent, irrelevant, and immaterial.)

A. There was some additions made to the machine and some repairing done; I should call it repairing a machine rather than making it new.

JULY 13TH, 1883.

Same appearances.

Examination of ROBERT D. LEECH resumed:

27 Q. Is it customary to repair machines by first taking measurements and making patterns and castings in the manner described by Thos. L. Smith in his testimony?

(Objected to as incompetent, irrelevant, and leading.)

A. It is not.

28 Q. What is the custom in reference to the making repair of machines?

(Same objection.)

A. When we have to do work that requires patterns, drawings, castings, and a great many new parts, the operation is the same as building; when we repair a machine it is understood that any old piece that is bent or broken is to be mended or straightened so as to save time and expense of making new parts; then the old parts are preserved and the machine is repaired. Sometimes half of a machine is repaired and the other half might be built new.

(Motion to strike out answer.)

29 Q. In answer to question 16 of the examination of July 10 you said that when the greater portion of the machine was destroyed and renewed it is rebuilding. Now, will you state whether the ma-

chines in this suit, the greater portions of each, were saved and used in refitting these machines, and whether, in your opinion, the
77 greater portion were made new, or the greater portion of these said machines so refitted embraced the old parts or not of hese inventions, both the box-trimmers and nail-feeders.

(Objected to as incompetent and as already answered.)

A. The greater portion of these machines were destroyed, so that the greater portion had to be made new; in fact that part of the machine which was missing had to be and was built new; the old parts that were used in connection with what was built new did not of themselves constitute a machine, nor did they comprise any of the claims of the patent.

(Motion to strike out, 1st, all of it; 2d, from "the old parts" to the end, as not responsive.)

30 Q. Look at Compl't's Ex. Model C, and point out, as marked thereon, the different parts that defendant made new besides what is represented by Ex. Tags 1 to 6.

(Objected to as incompetent, irrelevant, and immaterial, not in rebuttal, and already answered.)

A. As I saw the machine a new table or frame, marked D on the model, had been made. All the pulleys, 7, with the exception of the two spindle pulleys, were new. The shafts had been made new. There was an arrangement for attaching a long chute, such as is used in large factories, to the machine. Two new spindles for carrying cutter heads were made new. The guide bars were made new, lettered C and E. The driving belting and the carrier belt were not on at that time, but provision was made for it. A new spring and side bracket, marked K, was made new, for holding the self-adjusting cutter. The combinations of the different parts, as claimed in the patent, were all practically made new.

31 Q. Do the pieces from 1 to 6, saved and used by the de-
78 fendant in the repairs, constitute a perfect element or part in the combination, as claimed in the letters patent of the plaintiff?

(Objected to as incompetent and not in rebuttal.)

A. Parts 1 to 6 are inoperative by themselves, and can only be used in connection and working in combination with other parts, and they do not of themselves constitute any element of the patent claims.

32 Q. Look at parts 1 to 6, and state whether they embrace of themselves an adjustable and self-adjusting guides or not.

(Objected to as before.)

A. They do not.

33 Q. What is necessary to be done to make them so operate?

(Same objection.)

A. You would have to make them new. There is no guide shown in the exhibits (on the floor) at all.

34 Q. Would the self-adjusting and adjustable cutters operate as they are in those pieces?

(Same objection.)

A. They would not.

35 Q. What would have to be done to make them so operate?

(Same objection.)

A. New spindles would have to be put in the hangers; a new cutter head would have to be put on the spindle; new knives would have to be placed in the cutter head; a new roll or bar would have to be attached to the spindle in such a manner as to limit the amount of the cut by bearing against the box to be trimmed; a spring and a bracket to make the whole hanger, spindle, and cutter and guide bar press against the box to be trimmed would have to be made; a new frame or table would have to be made new to mount the whole upon, so as to make it self-adjusting and operative.

79 36 Q. Is any part of Ex. 1 to 6 saved and used in repairing that will operate in the machine without some addition being made thereto or some part connected therewith?

(Same objection.)

A. No.

37 Q. Assume that defendant used a Tidey cutter head in repairing the box-trimmer instead of making it new, would there be any difference as to the question of repairs—whether it was made new or purchased ready made?

(Same objection.)

A. That makes no difference.

38 Q. Assume that a portion of these new parts were cast and a portion purchased ready made by defendant or his agents, Smith & Doig, would that fact make these machines repaired machines, in your opinion, or would it change your opinion as to the machines being rebuilt?

(Same objection.)

A. It would not.

39 Q. Assume that certain parts of these machines were saved from the fire and not used by defendant in refitting, would that fact in any way affect the question of whether they were repaired or reconstructed machines?

(Same objection.)

A. It would not.

40 Q. If the carrier was taken from another box-trimmer owned by the defendant and placed upon this refitted machine do you think that fact would change the question whether this machine was repaired or rebuilt as described by Thos. L. Smith?

(Same objection.)

A. In my opinion it would make no difference where they got the material from in making a machine.

41 Q. Assume that these new parts were cast by a moulder, and that they were subsequently brought to Smith & Doig, who assembled the parts together in connection with the old parts, would you regard the moulders who made the new parts as the
80 builders of these machines or not, and who would you regard as the builder?

(Same objection, and also immaterial.)

A. The iron moulders would only be the constructor's workmen, and whoever caused to be put together the different parts would still be the builder of the machine.

42 Q. What is the construction of a machine?

(Objected to as before, and many times answered.)

A. Designing parts and making or having them made by others and finally putting the whole together so as to form a machine.

43 Q. Where the parts were cast new and no part thereof patched or mended of the old remaining parts, and they were assembled into a reconstructed machine, would you call that a refitted or repaired machine or not?

(Same objection.)

A. I should call it constructing a new machine, although some old parts were used that were good.

44 Q. State whether the combinations and device used in the letters patent of the complainant are a new device in machines for the purpose of trimming boxes and feeding a nailer with nails, so far as you are aware?

(Same objection.)

A. The combinations claimed in the patents, as far as I know or can learn, are novel.

45 Q. How long have you paid attention to this kind of mechanism, as well as others?

(Same objection.)

A. I have seen different kinds of wood-working machines for the last ten or twelve years.

46 Q. Do you deem the use of the Tidey cutter head any different in operation or its office from that used in Myers' machine?

(Same objection.)

And do they perform the same kind of work?

(Same objection.)

81 A. The cutter head by itself is common property, and their operation is about the same, the only difference being that the Tidey cutter head has four knives and that in the model C only

shows two; their operation, as far as the combinations claimed in the patent go, are the same.

Cross-examination by Mr. CHILDS:

47 X Q. How long have you been in employment of the plaintiff?
A. I have known and done work for Mr. Myers for the last five or six years.
48 X Q. Are you in his employ now?
A. I am not, except as regards being an expert in this case, and never have been. I do machine work for him as the owner of a machine shop, and he is a customer of mine, as the firm of Smith & Doig are.
49 X Q. You are employed and paid as an expert in this case?
A. Yes.

ROBERT D. LEECH.

OLIVER LIGHTOWLER called for complainant in rebuttal.

Examined by Mr. KINGSLEY:

1 Q. Look at Defendant's Exhibit Tidey's Cutter Head and state if you know about with what rapidity such cutter heads are carried round in the operation of the box-trimmer at work.

(Objected to as incompetent, irrelevant, and immaterial and not in rebuttal.)

A. It is supposed to make about 4,000 revolutions a minute.
2 Q. Have you seen the machine operate with the cutter heads used by Myers in the making of boxes?

(Same objection.)

If so, state if the cutters employed therein do their work
82 perfectly when properly fitted, and also state about how many boxes can be trimmed by a box-trimmer thus used per day.

(Same objection.)

A. I have seen several machines running with Myers' cutter heads, and, when properly fitted, they do their work well, and the trimming machine is easily able to trim 10,000 boxes per day.
3 Q. How many men, in the old way, would it take to trim that number of boxes per day, and about what would be the saving per day?

(Objected to as before.)

A. It would take about eight men to trim off by hand 10,000 boxes per day, and, taking $2 per day as an average for the men's pay, it would cost $16 per day; therefore, this trimming machine, with occasional repair and sharpening of cutters and power being applied to run it, would effect that saving, $16 per day.
4 Q. Will you now state what weight of metal is used in making a box-trimmer of the same size as sold to defendant, E. C. Smith?

A. As near as I can ascertain from the rough castings there is about 180 pounds, including the trimmer proper—the machine itself.

5 Q. How much metal will make new the nail-feeders as sold to the defendant?

A. About 178 pounds.

6 Q. What was the price the defendant paid for each kind of machine to Myers or to Swift?

(Objected to as before.)

A. I am unable to answer what he paid Mr. Swift. He paid Myers about $550 for the trimmers and $100 each for nine nail-feeders. He paid $125 for the last three; couldn't tell exactly, for I haven't looked up the amount.

7 Q. State whether there is any other box-trimmer than that of Myers now in use, or was there any other in use like it when he first obtained his letters patent, so far as you know.

(Objected to as before.)

83 A. There were no box-trimmers in existence at the time Myers sold them to Smith except his; there has been none in existence until within a few weeks.

8 Q. How was it as to the nail-feeder in regard to the letters patent of Myers, so far as you are aware?

(Same objection.)

A. There was a nail feeding machine in existence at the time that Myers sold this to Smith and when the patent was obtained. It was not like the Myers machine.

No cross-examination.

O. LIGHTOWLER.

FREDERICK MYERS called as a witness for complainant in rebuttal.

Examined by Mr. KINGSLEY:

1 Q. What is your age, residence, and occupation?

A. My occupation is mechanical engineer and manufacturer of machines; residence, 323 W. 20th street, New York city.

2 Q. Have you to some extent been an inventor?

A. Yes; for the last twenty years.

3 Q. Can you state about the number of patents you have obtained here and abroad?

A. They run over 100, I guess; can't tell exactly.

4 Q. Do you know defendant, E. C. Smith?

A. Yes; have been acquainted with him five or six years.

5 Q. Have you been in his place of business during that time?

A. Yes; many times.

6 Q. Have you sold him machines on which you had patents?

A. Yes; several.

7 Q. Did you ever sell him any box-trimmers on which you had patents, or nail feeding machines?

A. Yes; both.

84 8 Q. State, if you remember, whether you in any of those sales made restrictions confining the use of the same to himself or not; if so, state what the restrictions were.

A. He was under the same restrictions that all are, that he was only to use the machine in manufacture of boxes for his own use on his own premises. I sell all my patented machinery under such restrictions.

9 Q. Was there any agreement between you and the defendant embracing such restrictions?

A. I think there were. I am perfectly certain there were.

10 Q. State if there is any saving, if so, what, by the use of the box-trimmer over the methods in use before you obtained your letters patent therefor.

(Objected to as incompetent, immaterial, and not in rebuttal.)

A. The saving was very large; there was no way, only by hand, before; it would take a very good man to do 1,200 boxes a day by hand; their pay was $2.00 a day, which would make it about ten cents a hundred for trimming the boxes; when I put up the first trimmer for Mr. Smith he did about 4,500 a day on it, as high as 5,000; then he changed the position of the machine, and did nine to ten thousand a day for some time, and finally he changed the machine so that he did from thirteen to fourteen thousand a day on one machine.

11 Q. In what way did he accomplish the last result?

(Same objection.)

A. He lengthened the feed belt so that the boxes could be placed on the belt from three sets of nailing machines.

12 Q. The relative arrangement of these machines—did he purchase the right to use them that way from you under your method—patent?

(Same objection.)

A. I believe he did.

85 13 Q. Do you remember when the fire took place at his shop?

A. Not exactly. I was leaving for Europe and saw it aboard ship off Staten Island.

14 Q. Have you conversed with Mr. Smith in reference to your machinery since the fire?

A. No, sir.

15 Q. Did you immediately before?

A. I had many conversations with him before the fire; cannot tell when the last was.

16 Q. Ever converse with him about the box-trimmer and its working?

A. He was very much pleased with it; told me he thought it was the best thing ever invented in the box line.

17 Q. Did he ever complain that it didn't do its work well?

A. Not to me, nor to any one employed by me, so far as I know.

18 Q. How many will the machine do a day?

A. It will do 20,000 a day just as well as a thousand a day.

19 Q. Have you seen the Tidey cutter head?

A. I have seen those he makes.

20 Q. Do you use a cutter with two knives in your machine?

A. Sometimes two, sometimes three, sometimes four; there are no patents on cutter heads that I am aware of. I have seen the Tidey cutter head at work, but do not use it in my machines. There is no difference in the work accomplished by using the Tidey cutter head that I am aware of.

21 Q. How many revolutions a minute does your cutter head make?

A. It depends on how many boxes you make; the general speed is 3,800 a minute, but it can be run up to 10,000.

(Objected to.)

86 22 Q. Do you regard yourself as the first and original inventor of the inventions claimed in your patents for the trimmer and nail-feeder?

(Objected to.)

A. I believe I am.

23 Q. Can you state about the profit per day by the use of a machine over hand labor?

(Objected to.)

A. It depends entirely on how many are made a day.

24 Q. State whether the trimmer and nail-feeder have an extensive sale.

(Objected to.)

A. Yes; I make all the time and ship them all over the world.

Cross-examination:

25 X Q. Did you personally sell either of the box-trimmers or nail-feeders in suit?

A. I did.

26 X Q. All of them?

A. I don't think I sold him all of the feeders personally.

27 X Q. You think there was an agreement restricting him; are you willing to swear positively that was so?

A. I am not, but am pretty certain it was so.

28 X Q. Was there any bill of sale or other paper writing?

A. No bill of sale; there was a paper signed, and I think I have it in my safe.

29 X Q. You say that all who purchase machines from you are restricted in the use thereof; is that so?

A. I believe all but Orr & Fowler; they have six nail-feeders that have no restriction; they were the first put up.

30 X Q. Have not Reeves & Church some?

A. I think not; am not positive, but pretty certain of it.

87 31 X Q. How about the Erie Preserving Co., Dodge & Bliss, and O. F. Hawley?

A. Hawley is restricted; that I am positive of; Dodge & Bliss have none of my machinery that I am aware of. The Erie Preserving Co. are restricted, so far as nail-feeders go.

32 X Q. If E. C. Smith should state he purchased these machines out and out, and was not restricted in their use, would that not lead you. in considering the circumstances of the sale, to think that you might be mistaken as to having restricted their use to him?

A. I don't think I am mistaken.

FREDERICK MYERS.

Subscribed and sworn to before me this 13th July, 1883.

B. LINCOLN BENEDICT,
Special Examiner.

Testimony in rebuttal closed.

88 *Evidence for Defendant.*

Testimony taken on behalf of defendant, in pursuance of order of court under the 67th rule, before B. Lincoln Benedict, special examiner.

MARCH 9*th*, 1883.

Appearances: Mr. Childs, for defendant; Mr. Kingsley, for complainant.

EDWARD C. SMITH, called for defendant and sworn:

1 Q. What is your name, age, residence, and occupation?

A. Edward C. Smith; age, 42; residence, 131½ Noble street, Greenpoint; occupation, box manufacturer.

2 Q. Do you know the complainant, Frederick Myers?

A. I do.

3 Q. Did you purchase of Mr. Myers any machine known as his box-trimming machine; if so, when?

A. Yes; in 1878; about May—no, it was January 10th, 1878.

4 Q. How many trimmers did you buy, and what did you pay for them?

A. Two trimmers; paid $525, I believe, for both.

5 Q. Did you purchase from Myers any nail-feeding machines; if so, when, and what did you pay for them?

A. At the same time; I bought six; paid $112.50 for each; I think a year later I bought three more, for which I think I paid $125.

6 Q. Is that all?

A. That is all I bought from Mr. Myers, I believe.

7 Q. Did you purchase these machines out and out and pay for them?

A. I did.

8 Q. What did you do with these machines?

89 A. I used them in my factory, in my business, at 422 Oakland avenue.

9 Q. How long did you use them?

A. Three years; up to 1881, when the fire occurred—April 26.

10 Q. What fire do you refer to?

A. My factory was burned in 1881—April 26th.

11 Q. State in what condition and order all these machines were just before the fire occurred.

(Objected to as irrelevant and immaterial.)

A. In good condition.

12 Q. What happened to these machines at this fire in your factory?

A. They were damaged; one box-trimmer was, and the other was at my blacksmith shop, and was not in the fire; there were nine nail-feeders in the fire.

13 Q. What did you do in respect to those trimmers and nail-feeders which were injured by the fire?

A. I sent them down to Smith & Doig to be repaired and put in condition to use.

14 Q. When?

A. Immediately after the fire; a few days after, when the losses were adjusted.

15 Q. Did Smith & Doig repair those machines?

A. Yes; they repaired them.

16 Q. Are these the bills which Smith & Doig rendered you for making these repairs?

(Paper shown.)

A. Yes; these are the bills.

17 Q. And did you pay these bills?

A. I did.

(Bills offered in evidence, Exhibits 1 and 2.)

By Mr. KINGSLEY:

18 Q. Were those rendered at the time?

A. About the time of their date.

By Mr. CHILDS:

19 Q. About what time were the nail-feeders repaired?

A. From May 14th, 1881, to September 6th, 1881. The bill was rendered, I think, September 8th.

90 20 Q. About what time was the box-trimmer repaired?

A. May, 1882. The bill was rendered May 29th, 1882.

21 Q. Are you not mistaken in saying that the box-trimmer was sent to be repaired immediately after the fire?

A. Yes; I don't recollect when it was sent; probably about a year after.

22 Q. After the box-trimmer was repaired did you use it in your factory again; and, if so, how long?

A. Yes; three months.

23 Q. From what time to what time?

A. From May 28th, 1882, to August, 1882. I have not used it since.

24 Q. How many of the nail-feeders which were repaired by Smith & Doig did you afterwards use in your factory, and for what time?

A. I am using seven. I don't know how many we used; some were discarded.

25 Q. Why did you discontinue the use of the trimmer?

(Objected to as incompetent and immaterial.)

A. Because I found it was a detriment to me to use it.

26 Q. At the time of the fire did you have your machinery in your factory insured?

A. Partially.

27 Q. In adjusting the loss upon your machinery was there any abatement made by the insurance companies by reason of these machines being injured and not destroyed; and, if so, what amount?

(Objected to as incompetent and irrelevant.)

A. They made a deduction of $3,340; they made that abatement.

91 Cross-examined by Mr. KINGSLEY:

28 X Q. How long have you been in the business of manufacturing boxes?

A. About 16 years, I think.

29 X Q. What was the extent of your business in April, 1881?

(Objected to.)

A. That is before the fire; I can't say; it is two years ago; can't say here.

30 X Q. Can't tell about what business per year you did in boxes?

A. Probably $30,000 gross; don't think it was as much as $50,000; probably it would average $30,000 a month the year through.

31 X Q. Were your boxes made principally by machinery?

A. Yes; a good many were made for New York parties by hand.

32 X Q. Did you use any other machinery in April for trimming and nailing boxes than that you bought of Myers?

A. Yes; I did; I never bought a nailing machine of Myers.

33 X Q. Nor nail-feeders?

A. I did not use any nail-feeders but those I bought of Myers.

34 X Q. Did you use any other box-trimmer than what you bought of Myers at that time?

A. No; not for trimming the edges of boxes.

35 X Q. How many boxes per day did you make, on an average?

(Objected to as incompetent and irrelevant.)

A. When we run the machines they ran, I guess, 3,000 on a set in one day; there were many idle days; it would not average that.

36 X Q. Up to the time you purchased this machinery did you make the boxes by hand?

A. I did.

92 37 X Q. How many men would it take to make 3,000 boxes in a day of the kind the machines made, nailed and trimmed as they made them?

(Objected to.)

A. We didn't employ men; we employed boys. I couldn't tell you. The expense was very light.

38 X Q. Did you use all the machines you purchased of Myers continuously up to the time of the fire?

A. Yes; when we had occasion to use them—when we had orders for work.

39 X Q. Did you find the use of these machines a saving to you in the making of boxes?

(Objected to.)

A. I did; something of a saving.

40 X Q. If you didn't find them a saving, after the fire you would not have had them repaired, would you?

(Objected to as incompetent and argumentative.)

A. No, sir.

41 X Q. Did you buy any of Myers' machines from any one but Mr. Myers?

A. I did.

(Objected to.)

42 X Q. From whom?

A. From J. H. Swift.

43 X Q. How many?

A. Three.

44 X Q. When?

A. I can't tell.

45 X Q. What were they?

A. Three nail-feeders.

46 X Q. Were all these feeders accompanied with and attached to nailing machines when you purchased them or not?

A. Those I bought of Mr. Swift were not attached; those I bought of Myers were.

47 X Q. Were they all of Myers' make that were obtained of Mr. Myers?

A. I believe they were.

48 X Q. And you didn't use any nail-feeders except the Myers up to the time of the fire?

93 A. I did not.

49 X Q. Was the trimmer you sent to Smith & Doig repaired some time before you took it away, as you recollect?

A. I think we took it away soon after it was repaired; sooner than two months after.

50 X Q. How came you to say you sent it up with the nail-feeders, and then to say you thought it was about a year after?

A. I happened to think I had made an error. I know it was a long

time after; am not positive it was a year after; should say it was longer than six months. We used the other while this was disabled.

51 X Q. Did you use both the trimmers at one time?

A. Not since the fire; laid the work out differently.

52 X Q. Did you use anybody else's make in place of it?

A. No, sir.

53 X Q. Have you used any other feeding machine, other than Myers', since the fire?

A. Yes; I am using others; Smith & Doig's.

54 X Q. How long have you been using that?

(Objected to as incompetent.)

A. I can't say.

55 X Q. Have you been using it for a year past?

A. No; I should say about six months.

(Objected to.)

56 X Q. How many?

(Objected to.)

57 X Q. Is this a machine they have constructed since your fire?

(Objected to as incompetent and irrelevant.)

A. It is.

58 X Q. Is it patented by them?

(Objected to.)

A. I don't know.

59 X Q. Have you ever heard them say it was?

(Objected to.)

94 A. I have heard them say it was. I don't know when.

60 X Q. How many of the Myers machines are you using now?

A. I am using no machine; am using feeders.

61 X Q. Do you use either of his trimmers?

A. No.

62 X Q. When did you stop using the Myers trimmer?

A. August 28th, 1882; have not used either of the trimmers since that date. I don't use any trimmers of any kind.

63 X Q. How do you trim your boxes?

A. I don't trim them at all.

64 X Q. Do you sell them to anybody who does trim them?

A. No, sir.

65 X Q. How soon after the fire were you at your factory?

A. I was there when it was burned.

66 X Q. About what time was it?

A. About half past twelve.

67 X Q. Did the building wholly burn?

A. Yes; the main building did.

68 X Q. Whereabouts in the building was the Myers machinery at the time of the fire?

A. On the 3d floor.

69 X Q. What kind of a building was it?

A. Frame.

70 X Q. How much lumber was there in the building?

A. I can't tell; had a little in there for boxes—none of any amount.

71 X Q. What amount of boxes was there in the building?

A. I don't know—have no idea—probably 1,000 or more.

72 X Q. Pine boxes—dry?

A. Yes; about half seasoned.

73 X Q. What companies insured you?

A. I don't recollect—can't tell here.

95 74 X Q. You were insured for how much?

A. $43,000; I was paid $38,000 and something; I haven't the exact amount here.

75 X Q. Was it a general average of your machinery and stock by the companies?

A. They made a deduction I know; I don't know how they got at it.

76 X Q. How much?

A. $3,340.

77 X Q. What kind of machinery did you have in that building?

A. Planing machines, saws, nail-feeders, nailing machines, and printing presses.

78 X Q. How many of each?

A. I am not able to tell that to-day.

79 X Q. How many planers?

(Objected to.)

A. Seven planers, I believe—seven or eight.

80 X Q. What did they cost?

(Objected to as irrelevant.)

81 X Q. Did you not represent to the insurance companies that these Myers machines were so injured by the fire that they were worthless to you in your business——

(Objected to.)

and ask them to pay the full amount of them?

(Objected to.)

A. I do not recollect ever saying to the insurance companies anything of that kind. Of course, I made demand for the full amount; the machinery was not fully insured; I had $53,000 of machinery in the mill.

82 X Q. Who did you ask to pay the full amount on the Myers machinery—what insurance man?

A. Mr. Boughton, my insurance agent; he is my representative—settled my insurance for me. I didn't see the companies myself.

83 X Q. You don't know, then, of your own knowledge, that the full amount was not paid on the Myers machines?

96 A. Yes; I do. I saw the adjusters and heard their talk about it; they came to my place.

84 X Q. Who were the adjusters?

A. Mr. Joslin, of S. Wood & Co; Mr. Farlington, I think.

85 X Q. What was said by them in your presence?

A. That I would save the royalty, the patent, and they were entitled to that; that the machines could be repaired.

86 X Q. Did you say to them that the machines could be repaired?

A. No, sir.

87 X Q. Did you or your adjusters represent to the company that there was a total loss on those machines?

A. They tried to get the full amount of my insurance, of course.

88 X Q. Well, on these machines of Myers'?

A. Yes; everything.

89 X Q. You can't say there was any deduction on the Myers machinery?

A. On the patent machinery; they saw it right there before them.

90 X Q. Was there any deduction on the Myers machinery as such?

A. Yes; that is what the $3,000 was taken out for—the patent machinery. I don't know what proportional part came off the Myers machines.

91 X Q. What was the general condition of the machinery after the fire?

A. I can't say. I am no mechanic. It was injured. I suppose it would be considered badly injured. I didn't know how much trouble there was involved in repairing it up. I couldn't tell.

92 X Q. Did you get it all repaired?

A. No.

93 X Q. Why not?

A. It was so badly damaged it wouldn't pay.

94 X Q. What machines?

A. The planing machines—all of them—saws; some of the reslitting saws.

97 95 X Q. Did you get the printing press repaired?

A. Yes.

96 X Q. What were the planers made of?

A. Cast and wrought iron, I believe; iron and steel, I suppose; not wood.

97 X Q. The saws, were they made of wood?

A. No; the mandrels and uprights were iron. The reslitting saws were all iron; they were not repaired.

98 X Q. Were any of the machines that were an utter loss made of wood?

A. Yes.

99 X Q. What ones?

A. We call them fitting-up saws; the mandrels of those were good.

100 X Q. What was the cost of the planers?

(Objected to as incompetent and irrelevant.)

A. I don't know; various prices. I can't tell what I paid for them; there might have been one that cost $1,000, the others less; a small one cost $175, I think.

101 X Q. Were they sold for old iron?

(Objected to.)

A. Yes.

102 X Q. What floor were the planers on?

A. The first floor.

103 X Q. Were they the heaviest machines in the building?

A. No; some of them were very light.

104 X Q. Were the Myers machines and feeders as heavy as any you had in the building?

A. No.

105 X Q. What did it cost you to replace your machinery in your factory, after the fire?

(Objected to as incompetent and irrelevant.)

A. I don't know; I can't say here; can't tell about what it cost; could tell at the factory.

106 X Q. Did you not pay upwards of $20,000 for new machinery?

98 (Objected to as incompetent and irrelevant.)

A. I don't know.

107 X Q. You bought a good deal of new machinery after the fire?

A. I did.

108 X Q. The reason was that the fire destroyed what you had?

(Objected to.)

A. It was cheaper to buy new than to repair.

109 X Q. How did you find your machinery generally after the fire—covered with ashes or cinders, or out of the ruins?

A. It was out, not all out; the building being pine it all burned to ashes. All that burned was frame; the engine-house was separate. No wall fell that I know of.

110 X Q. What machinery besides the Myers was on the 3d floor?

A. The small fitting-up saws, three small planers, and two printing machines.

111 X Q. Were they repaired?

A. One of them—one printing machine; there were three printers there; one was a total loss. The Myers printer was right alongside, and that was repaired; the other two were Gally printers.

112 X Q. Were any of the Swift machines on that floor?

A. They were all there—12; none of them were destroyed; they are running to-day. I had them repaired.

113 X Q. Didn't you use a feeder with every one of the Swift machines?

A. I didn't, for three of them were not in use; they were stored there till such time as I got busy.

114 X Q. Did you have feeders for each of the nailers?

A. I did.

115 X Q. Did you see Smith and Doig with reference to making repairs on these machines of Myers soon after the fire?

99 A. Yes.

116 X Q. Did you order them to make repairs on all this machinery of Myers?

A. Yes; all I sent down there. I didn't send all the feeders there—sent nine.

117 X Q. Did Smith & Doig hesitate about making repairs on this machinery of Myers on the ground of patents on the machines?

A. No, sir; no objection.

118 X Q. Did you agree to indemnify them for any suit or any damages that might arise against them in consequence of these repairs?

A. I did not.

119 X Q. Nor ever did?

A. Yes; not at the time. When the trimming machine went down I agreed to indemnify them on that; at the time the trimmer was about one-half or two-thirds done. A year had expired before we undertook to repair that, and then I agreed to indemnify them.

120 X Q. When do you say that trimmer was repaired?

(Objected to; bill in evidence.)

A. About a year after the fire occurred.

121 X Q. Before the repairs were fully made you agreed to indemnify them?

A. Yes; on the trimmer; no objection was made on the other machines.

122 X Q. Did you buy the machines of Myers personally?

A. I did.

123 X Q. Did you receive from Myers any writing or license to use those machines so purchased from him at the time or since?

A. No, sir.

124 X Q. Or any of them?

A. No; not from Mr. Myers.

125 X Q. Did he say to you that in selling your machines you should have a right to use them only yourself?

A. No, sir; not a word.

100 126 X Q. Do you deny ever having any writing or license to use these machines from Myers?

A. I do. From Mr. Swift I have.

127 X Q. Have you those with you?

A. No; everything was burned up. I had no license from Swift for his nailing machines; had for some of his feeders; they were burned.

128 X Q. Did those give you a license to use them?

A. Mr. Lightowler signed them. Mr. Swift brought them and gave them to me with the machines. I demanded a license from Mr. Swift, as I was dealing with him. It was signed for Mr. Myers by Mr. Lightowler.

(Questions as to Swift objected to.)

129 X Q. That covered feeders?

A. Yes; three; they were never used—never set up—till they were burned.

(Paper shown.)

130 X Q. Is the paper now shown you, signed by Frederick Myers, dated June 7, 1879, an agreement between you and Mr. Myers in reference to machines?

(Objected to.)

A. I don't know.

MARCH 17TH, 1883.

Cross-examination of EDWARD C. SMITH resumed.

By Mr. KINGSLEY:

(Paper shown.)

131 X Q. Was that paper signed by Mr. Myers in your settlement with him? Did you receive it from Mr. Myers at the time of the date of it?

A. I wasn't there at the settlement.

132 X Q. And is it signed by your lawyer as a witness?

A. I was not there; I don't know; I could not swear to his signature. I have seen him write, and think it is his.

101 133 X Q. Have you ever received from your attorney a paper like that in settlement with Mr. Myers?

A. I can't say that I have. I don't know whether I have or not.

134 X Q. Did you, on or about the 17th of June, 1879, pay Mr. Myers $350 in settlement of a certain suit then pending against you for infringement of the method patent?

(Objected to as incompetent and immaterial.)

A. Yes; I paid him $350.

135 X Q. And did you authorize your attorney to settle the claim at that time?

(Objected to as before.)

A. I don't know if it was infringement of the patent or not. I gave him $350 for settlement of the suit that was pending.

136 X Q. What of the Myers machines did you run in connection with each other about the time that this suit was settled?

(Objected to as before.)

A. I don't know as I understand you. I ran a nail-feeder; we used nail-feeders of Myers—were running trimming-off machines and 9 nail-feeders, I guess, at the time. I don't know what you mean by connection with each other.

137 X Q. Were any of the Swift nailers on the third floor broken up in that fire or not?

(Objected to as before.)

A. Broken by falling or crushed? Might have been broken in falling—crushed or injured.

138 X Q. Were the Myers feeders attached to those machines at the time?

A. Nine of them were.

139 X Q. Were those the nail-feeders that you had repaired by Smith & Doig?

A. Yes.

140 X Q. Were the three other nail-feeders injured beyond repair?

102 A. Were not injured at all. They were not in the building.

141 X Q. Where were they?

A. In the blacksmith shop.

142 X Q. Were all the Swift nailers broken?

A. All injured; not all broken, I suppose; I don't know.

143 X Q. Did you see them all after the fire?

A. I don't know as I did; I did not examine them.

144 X Q. Are you sure you saw any of them at the building?

A. Yes; how many I don't know.

145 X Q. You can't tell, then, of your own knowledge, whether they were broken or not?

A. Yes; I know some of them were broken.

146 X Q. Were any of the feeders attached to the nailer broken?

A. I don't know that they were. I paid a bill to have them repaired.

147 X Q. Did you see them immediately after the fire?

A. I saw them with the rest of the ruins; didn't examine any particular part.

148 X Q. Was the Myers trimmer broken in consequence of the fire there?

A. I don't know.

149 X Q. When did you first see it?

A. I don't know.

150 X Q. Did you see it before it was sent to Smith & Doig's for repairs?

A. I am not positive that I did.

151 X Q. How much of that machine—what proportion—was embraced by wood-work?

A. I don't know.

152 X Q. Most of it?

A. I don't know; I know part of it was wood.

153 X Q. Did you find any part of your machinery in the build-

ing at the time of the fire on that third floor which was
103 wholly or partly constructed of wood but what was burned up at the time, so far as the wood is concerned?

A. I didn't look for the wood-work, but I'd venture to say it was burned; I didn't rake over the ruins.

154 X Q. Was all the machinery used on the third floor which was constructed wholly or partly of iron, steel, or metal more or less seriously injured by the fire?

A. Was all more or less injured.

155 X Q. Was any of it so badly injured as not to be able to use it thereafter?

A. It necessitated a repairing up, all of it.

156 X Q. Was some of it on the third floor totally destroyed as machinery and was it sold as old iron?

A. It was sold as old iron, some part of it.

157 X Q. Any part of the nailers and feeders sold as old iron?

A. Not as I know of.

157½ X Q. What machines on the third floor were sold as old iron?

A. There were two or three small planers—light planers—sold as old iron, one of Gally presses, some pulleys and shafting; I have no knowledge of any of Myers' castings being sold as old iron; I don't know.

158 X Q. Do you know if any part of the nail-feeders wasn't sold as old iron?

A. I don't know, of my own knowledge; I sold none.

159 X Q. Who attended to the sale of it?

A. I attended to the sale of most of it, I guess. Mr. Tinkham is my manager.

160 X Q. Any part of the nailer destroyed?

A. None sold for old iron, as I know of; I presume part was destroyed. I don't know any more than what I heard.

161 X Q. Were any of the castings in the Myers machines disused and left out in the repairs made by Smith & Doig?

A. They put in new ones.

104 162 X Q. Was anything else put in as new at the time of making repairs in the Myers machines?

A. I don't know what they put in—what parts were new.

163 X Q. Were you informed that any part but the castings was left out and disused in the repairs?

A. No.

164 X Q. How long did the fire last in that building?

A. Twenty minutes or half an hour.

165 X Q. Was it intensely hot?

A. Presume it was hot.

166 X Q. Did the fire department arrive before it was burned up?

A. Yes.

167 Q. Did they throw water?

A. Yes; all over the building.

168 X Q. How long?

A. I don't know.

169 X Q. You saw water thrown on by the department?

A. Yes.

170 X Q. Would the machinery composed of metal when intensely heated and suddenly cooled be likely to suffer injury and warp?

A. I don't know; I am no mechanic.

171 X Q. Did you find the iron portion of the machinery considerably warped after the fire?

A. Yes; the long planers; I don't know as they all were.

172 X Q. Was the Myers trimmer as well as the Swift nailers, which embrace the feeder, the heaviest machines on the third floor at the time of the fire?

A. The Swift nailers were the heaviest, I think; don't know what they weighed; I should say they were heavier than the trimmer.

173 X Q. Did you ever use the Swift nailer without the Myers feeder?

A. I did; don't recollect when; before I bought the Myers feeders.

105 174 X Q. How were the nails fed in this Swift nailer at that time and before you used Myers' feeders?

A. The nails were dropped down in the tube by boys—one boy for a nailer.

175 X Q. Did the nailer have to stop in order to have the nails fed when you used it with Myers' feeder?

(Objected to.)

A. Yes; always stop with any feeder.

176 X Q. Couldn't you run and nail a great many more boxes with the feeder?

A. Yes.

177 X Q. What would be the difference per day in the number of boxes when boys fed the nailer and when you used the Myers feeder?

(Objected to.)

A. I don't know.

178 X Q. Couldn't you nail twenty-five per cent. more boxes per day after the feeder was attached?

(Objected to.)

A. I don't know how many more—cannot tell; we could nail faster, but I can't tell how much faster.

179 X Q. Couldn't you make about 4,000 boxes with one of the Myers trimmers per day in connection with the other machinery you used?

(Objected to.)

A. Yes; more; can't say how many more; don't know how many you could put through in a day; presume 5,000.

180 X Q. Have you left off using the Myers trimmer in conse-

quence of your using a new improved sawing machine, or did you leave off in consequence of this suit——

(Objected to.)

And by advice of your counsel?

A. I have no improved sawing machine, nor did I leave off in consequence of this suit or advice of counsel.

106 181 X Q. For what reason did you leave off using the Myers trimmers?

A. It is a nuisance.

182 X Q. When did you come to that conclusion?

A. I don't know.

183 X Q. Why did you get Smith & Doig to repair it at an expense of $104 if you regard it as a nuisance?

A. I didn't discover it till afterwards.

184 X Q. How did you happen to discover it since?

A. I can't tell you that; it will strip out and make expense and trouble to repair the boxes after—took a man all day to repair boxes after it.

185 X Q. Did you try to force through this trimmer about 15,000 or more boxes a day?

A. I did.

186 X Q. When?

A. Up to the time when I discontinued it, at times; not every day; the boxes didn't all require trimming.

187 X Q. Since the repairing of the machine have you tried to force through that trimmer 15,000 boxes a day?

A. No forcing them at all.

188 X Q. How many sets of machines did you use with it?

A. Three; sometimes two; have run four at a time—not every day.

189 X Q. How many boxes will each set make in a day?

(Objected to as before, and already answered.)

A. As many as you can get men able to handle them.

190 X Q. Will each set make from 3,000 to 4,000 a day, properly handled?

(Same objection.)

A. Yes, they will now; not when we first put them up; the men are now skilled at it.

107 191 X Q. How much did your boxes cost you to make them before you used the Myers feeder and his trimmer?

(Objected to.)

A. I don't know what they cost me.

192 X Q. How much have they cost you apiece or per dozen since you have used the Myers machinery?

(Objected to.)

A. That depends on the kind of boxes—a penny apiece; some others cost less than half a cent; I don't know exactly.

193 X Q. Before you used the Myers machinery didn't your boxes cost you $1 a hundred, or about a cent apiece?

A. I don't know; we made them by boys.

194 X Q. What part of your business do you supervise yourself?

A. Selling and buying the lumber.

195 X Q. Don't you know what your boxes cost you?

A. I haven't it in my mind; can tell from my books.

196 X Q. Don't you make them cheaper with Myers' machinery?

A. Something cheaper; can't tell how much.

197 X Q. There is some charge for materials in the bills of repairs?

A. I don't recollect; the first time I saw them was here the other day; I don't pay the bills myself.

198 X Q. Why was the printer on the third floor repaired and used again in your business?

(Objected to.)

A. Which one? Mr. Myers' printer was repaired; one of Gally's was repaired, and the other he advised me to have a new one, as it would be cheaper than to repair it; there wouldn't be enough saved to make it any object to repair it.

199 X Q. Did you see that printer before it was sent off to be repaired by the maker?

108 A. I saw it; didn't examine it.

200 X Q. Was it any worse injured than Myers'—the one that was not repaired?

A. I should say it was.

201 X Q. In what respect?

A. I don't know; I sent it up to Hartford.

Redirect by Mr. CHILDS:

202 Q. You stated in answer to X Q. 74 that you were insured for $43,000, and that you were paid $38,000 and something, and that you didn't have the exact amount then with you. Can you now state more accurately the amount of your insurance and the amount you were paid?

A. I can. Insurance, $40,220. I received $36,880; deduction, $3,340 on patent machinery.

203 Q. Where did you get those figures?

A. From Mr. Boughton, my insurance agent.

204 Q. Is not the $3,000 mentioned by you in your answer to X Q. 90 intended to be $3,340?

A. It is.

205 Q. In answer to X Q. 127, "Have you those with you?" referring to license to use machines from Myers, you answered as follows: "No; everything was burned up. I had no license from Swift for his nailing machines; had for some of his feeders; they were burned." Do you wish to make any correction in this answer; if so, what?

A. Those feeders were not burned; they were in the blacksmith shop; I had a license for those three feeders.

206 Q. Were those the Myers feeders which you bought of Swift at the time you bought your nailing machines of Swift?

A. Yes.

207 Q. And did you require Swift to obtain from Myers the right to put them on his nailers and for you to use them before you bought them?

A. I did.

208 Q. In answer to X Q. 129, "That covered feeders?" you
109 say, "Yes; three; they were never used—never set up till they were burned." Do you wish to make any corrections?

A. The nailing machines were burned, but the feeders were not.

209 Q. With the exception of this one box-trimmer and nine feeders, which you have testified you caused to be repaired by reason of injuries sustained from the fire in your factory, have you ever made or caused to be made any of these Myers machines or built or constructed the same in any way or manner?

(Objected to.)

A. No, sir; never.

Recross by Mr. KINGSLEY:

210 X Q. You said on your cross-examination that $3,000 and upwards was deducted on account of Myers' patent machinery in settlement of insurance; was that correct?

A. I didn't say so, that I recollect. It covered all the patent machinery—Myers' and Swift's. I don't know as I had any other.

211 X Q. Who made that deduction?

A. The insurance adjusters.

212 X Q. In your presence?

A. No.

213 X Q. Do you swear that $3,000 and upwards was deducted from your insurance in behalf of the patent machinery at the time of the settlement?

A. I know that I am short that much. I didn't receive it. I know it was deducted.

214 X Q. Who settled it with you?

(Objected to as already answered.)

A. You have got the names down.

215 X Q. Do you say that that deduction was made personally with you by the adjusters?

A. Yes.

216 X Q. Wasn't the patent machinery injured as much as machinery that had no patent on by the fire?

A. No; it does not.

110 217 X Q. Can you tell how much was deducted on account of Myers' patents?

A. No; I cannot.

218 X Q. Have you not stated that you were not there at the settlement and adjustment of the claims?

A. I don't recollect.

219 X Q. When were the three feeders purchased through Mr. Swift?

A. I don't recollect to-day; think I gave the date the other day. It was three years ago. I can't give the date.

220 X Q. Were these three nailers purchased of Swift at the same time?

A. Yes.

221 X Q. Do you remember what the feeders cost you?

A. I bought them all together, the nailers and feeders.

222 X Q. Did you need them in your business?

A. No; not at the time.

223 X Q. Why did you purchase them?

A. To have them extra in case I needed them.

224 X Q. Did you see the three nailers and feeders when they were delivered at your shop or not?

(Objected to.)

A. Yes; of course.

225 X Q. Where?

A. On the wagon. They asked me where they should be delivered.

226 X Q. Where were they placed—upstairs?

A. On the third floor. I have told you all that before.

227 X Q. Did you run the machinery yourself on the third floor at any time?

A. Tend the machines? No; that is not my business.

228 X Q. Who did?

A. I had men running them; don't know how many; twelve or fifteen.

111 229 X Q. Who was your head man to run that machinery?

A. I had two departments and two men. My brother was foreman of machinery.

230 X Q. Were all the nailers used in one room?

A. All that were in use were in one room.

231 X Q. Sometimes all the nailers were in use and sometimes part?

A. They were never all in use, for three were not in use—only stowed there.

232 X Q. How often did you go to that third floor?

A. I don't know; perhaps every day.

233 X Q. How many nailers were in use at any time during the past four years?

(Objected to as before answered and immaterial.)

A. At times there were three sets.

234 X Q. How many sets were there that could be used?

A. Three sets; nine nailers, but three sets.

235 X Q. Didn't you run them all together?

(Objected to.)

A. No; not usually.

236 X Q. How many?

A. It all depended on business.

237 X Q. It was cheaper to run them together, wasn't it?

(Objected to.)

A. If there was no demand for the goods I wouldn't manufacture if it was cheaper.

238 X Q. If it was not cheaper to run them together why did you pay Myers $350 for his method patent by which they could be run together?

(Objected to.)

A. They were not all to be run together; as occasion required.

239 X Q. If occasion required, you did run them together?

A. Yes.

112 240 X Q. Were the Swift nailers all of the same size and pattern?

(Objected to.)

A. There might be a little difference in the heights of them; think there was.

241 X Q. Could you tell, after a dozen of Swift's nailers were placed around in a room, one from another, except by the height?

(Objected to.)

A. No.

242 X Q. How many of them were of less height than the others?

(Objected to.)

A. Three were a little lower than the rest, I believe.

243 X Q. When did you purchase those?

A. I don't recollect.

244 X Q. Were those three the purchase you spoke of that embraced the Myers feeders or not?

(Objected to.)

A. I don't know whether they were or not. I think they were.

245 X Q. How could you tell, then, that the three Swift machines and Myers' three feeders were the ones you have spoken of as not having been on the third floor at the time of the fire?

A. The others were all placed in position and working. These came in later and stood there.

246 X Q. How long had you had them at the time of the fire?

A. I don't know.

247 X Q. Would you swear of your own knowledge that the three machines so purchased of Swift with the Myers feeders were never, under any circumstances, used to make boxes in your shop?

A. Yes; I will swear they never were used.

248 X Q. If these three Myers feeders had never been used why had it become necessary to send them to a blacksmith shop at the time of the fire?

A. They were put there on storage with other property of mine in the loft.

113 249 X Q. When were they put there?

A. I don't know; soon after they were delivered.

250 X Q. Did you see them set away?

A. I don't know as I did.

251 X Q. Did you order them sent to the shop?

A. I did myself; soon after they were delivered; probably a couple of days after.

252 X Q. Do you say that you did not receive from Myers licenses to use the three feeders purchased by Swift and delivered to you?

(Objected to.)

A. I did not receive any from Myers.

253 X Q. Did you require Mr. Swift to obtain licenses from Myers to use the machines?

(Objected to.)

A. Yes; I did.

254 X Q. Were the licenses burned up?

A. No.

Counsel for respondent produces the licenses.

License offered in evidence by counsel for complainant, marked Ex. F.

255 X Q. Have you used the three Myers feeders covered by this license since the fire?

(Objected to.)

A. Yes; at times.

114 MONDAY, *July* 2, 1883.

Hearing resumed.

Cross-examination of EDWARD C. SMITH resumed.

By Mr. KINGSLEY:

256 X Q. Will you state if you have any books or memoranda made by you or your clerks with reference to the property that was destroyed or injured by the fire in your place in 1881?

A. We have not, to my knowledge.

257 X Q. Did you make out or cause to be made out a schedule or inventory of the property so injured; and, if so, what was done with it?

A. I did; Mr. Joslin and Mr. Darlington each had a copy.

259 X Q. Did those inventories comprise all the property so injured by the fire? And, if so, state what was the aggregate amount which appeared on the inventory.

A. Yes; as near as we could; between $52,000 and $53,000 was the aggregate amount of the machinery destroyed.

259 X Q. Did the insurance policies cover any property that was not injured and destroyed by the fire?

A. No; not any.

260 X Q. Were all the fixtures in your place covered by your policies?

A. I think they were not; there was nothing on the engine or boiler, except from explosion—nothing for fire.

261 X Q. Were they not covered by a policy of insurance against fire?

A. No, sir; nor ever were.

262 X Q. Did you receive any part of this money for fixtures in your place other than machinery?

A. Yes; the steam piping and gas-fixtures outside of the office.

115 263 X Q. How much was received on that?

A. I don't recollect what proportion it was; it was all included.

264 X Q. Did the policies have a clause covering fixtures?

A. Yes.

265 X Q. Were there not fixtures on which this insurance money was received which were not injured by the fire?

A. No, sir.

266 X Q. Did you not have many trucks?

A. Yes; I can't tell how many; 12 or 15.

267 X Q. What did they cost apiece?

(Objected to as incompetent, irrelevant, and immaterial.)

A. What trucks do you refer to—horse trucks or hand trucks?

268 X Q. That makes no difference; answer to both.

A. I don't know; $12 or $15 for hand trucks; horse trucks are different prices; I have got them $50 to $400.

269 X Q. How many had you?

A. I can't tell; I presume there were 15; they were in the lumber yard.

270 X Q. How many did you have at the time of the fire?

A. I don't know; I should say 15 horse trucks; I don't know but more. I don't know how many hand trucks there were; they were all in the mill and burned; they were all put in the inventory.

271 X Q. Were any of the horse trucks burned?

A. There were; I think three of them that were in the yard; they were not insured; some of the horse trucks were insured.

272 X Q. After the fire was all the machinery removed from the place of the fire or not?

A. Yes; it was.

273 X Q. The old iron also?

A. Everything was removed after the fire to Greenpoint, to a storehouse.

116 274 X Q. Did you sell the old iron?

A. I sold it, yes, except two or three pieces of shafting laid aside.

275 X Q. What kind?

A. Three-inch main-line shafting and a half a dozen saw mandrels; I have them now—three of them.

276 X Q. What was the value of these mandrels and part of machinery?

A. I could not tell you.

277 X Q. Was it in good condition?

A. No; very poor. I used some, but the machinist said it cost as much as to buy new, so I bought new.

278 X Q. Did you sell the old iron?

A. Yes; the insurance Co. made me a present of that.

279 X Q. What machinery had patents on at the time of the fire in your place? State each kind and the number.

A. I don't know; I guess they all claimed patents on them, but I can't speak of my own knowledge.

280 X Q. Were there letters patent on the nailers, as you were advised?

A. There were.

281 X Q. And you purchased them as patent from Mr. Swift?

A. I did.

282 X Q. Anybody else?

A. I bought the nailers all of Mr. Swift—twelve, I believe.

283 X Q. What did they cost you each?

A. I don't recollect; I believe I paid $2,000 a set.

(Objected to as before.)

284 X Q. How many sets?

A. Four sets.

285 X Q. How many saws did you have, and were there patents on them, as you were advised?

A. I don't recollect.

117 286 X Q. You did recollect when you made up your inventory?

A. I gave that wholly on the judgment of others.

287 X Q. Can you not state about what number of saws you had of different kinds?

(Objected to.)

A. I had a memorandum here before and would refer to that. I think I answered that question.

288 X Q. Were there two dozen?

A. I don't recollect.

289 X Q. Were they patented?

A. I don't know.

290 X Q. Did you buy them as patented machines?

A. There was nothing said about that.

291 X Q. Who did you buy them of?

(Same objection.)

(It is agreed that all the previous testimony is taken under objection.)

A. Different parties; I can't recall them: Mr. Tidey, I don't know where he lives; his factory is in Newark; he never advised me there were patents on them; if I wanted a swing saw I went there and got it. I don't know of my own knowledge they were patented; never had any conversation with any one about it. There were three printers. Mr. Myers made one, Mr. Gally the others. I suppose they were patented, but I don't know. I paid $600 apiece for Gally's printers; perhaps one was $450; it was smaller. I don't know what I paid for Myers. I don't recollect that I had a printer of my own patented before the fire. I used my brother's printer, Myers' and Gally's. I had before the fire a nail-feeder to every machine, I think. I don't remember what they cost. I had a trimmer besides Myers' before the fire—my brother's. There was a patent on it. It was destroyed by the fire. We never put a value on it. It was the first one ever built—a simple thing, a kind of home-made affair. I paid Myers for the box-trimmers, $5.50, I believe—for two of them.

118 292 X Q. Did Mr. Tidey ever inform you he had letters patent on his saw?

A. I don't know that he did; there was never anything said about it; if I wanted a saw I got it and nothing was about patents. I think they were $50 apiece—swing saws; there were six or eight of them—perhaps ten. There were four resaws, I guess; they cost $800 down to $350. I don't know who made them—a man out at Rochester. Some parts of them, I believe, were patented. I don't know about the small saws. There were six planers, I think. I don't recollect what I paid for them. I have stated the price, I think; they ran from $150 to $500 or $600. They were S. H. Wood & Co.'s planers; nothing was said about their being patented; I don't know that they were. There was no other machinery that had patents on it that I recollect. The names of the saw-maker I now remember—Cornell & Diegler, of Rochester. I have replaced with new machinery in the main my works since the fire. I can't enumerate them; you will have to go and count them up. I have purchased new nailers—four of Swift; I don't recollect the date; I am using them. I have purchased nail-feeders since the fire—nine, I believe—of Smith & Doig; I am using them. I have not purchased any box-trimmer since the fire. I run my machines in sets in my shop; have six sets. I suppose you call them sets. Some are three in a set and some two. There are three nailers in four sets and two sets of two each; there are no other machines in a set. The trimmer hasn't anything to do with the nailing. I don't use a planer in these sets.

293 X Q. Did you pay Mr. Myers $300 to run your machinery under his letters patent?

A. I don't know; I never went near him; my lawyer paid him something to settle up; I paid him so much for the whole business and run the four set according to that method; the two set we do not; we think it an advantage to have only two in nailing pro-

119 miscuous-sized boxes; it don't cost so much to run; we run nothing but nailing machines in the two set; don't use a

printer in the set; print the stock before it goes to nails; the printer is not used in sets; I don't know why it constitutes a set; the box is carried along on a belt and a boy puts it in a printer and prints it; we don't have the printer in a set; it is independent.

I don't know as there is any great advantage in running in sets; it is convenient; I don't know as there is a penny saved; it costs me the same as other men who don't run it at all. I paid Swift $100 for permission to run a fourth set since the fire. I had four sets before the fire and do now; have never run more than four sets of Myers'; am using four sets with Myers' method; have never used more. The two extra sets I speak of do not comprise his method. He claims three machines in rotation to cover his system. The only difference is that I use less machines; use only two in the two sets, the nailers and feeders.

I can't tell how many more boxes I could make in a day by running machines separately and not in sets. I have never used them separately. Mr. Myers put them up the first time they were put up. I can't tell if they produce more boxes together than separately. Reeves & Church ran two in a set, they tell me, and employ just as many men; they pay just the same. I have run the two extra sets, one since perhaps six months ago, the other Mr. Lightowler built. I don't know how long two have been run in a set; never saw them so before those in my place. I never knew of their being run in sets until Myers introduced them.

Redirect by Mr. CHILDS:

294 Q. How much did you receive for the old iron that was in the fire, which you sold?

(Objected to as immaterial, incompetent, and irrelevant.)

120 A. I went to the man I sold it to and ascertained, $785.87, about.

Recross:

295 X Q. What time was that?

A. I don't know. I didn't get the date of it. I presume the sale was three or four months after the fire. I got $18 a ton on the ground—in the store-house—about forty-four tons; that comprised all the old iron.

The adjusters made a deduction on the nailers and feeders, as I understand. I was around when they came to an agreement; did not hear all their conversation.

296 X Q. Does the running two machines in a set save labor and cost of production?

A. I understand it does, so they tell me, on promiscuous boxes, fifty of one size and one hundred of another, and so on.

297 X Q. When you run two in a set isn't it when you don't have many to make?

A. That is only when we make various sizes; when we run a lot of one size, then we use the three.

298 X Q. The difference in running two or three is, then, from the size of the boxes?

A. Yes.

299 X Q. Assume you had one thousand boxes, all the same size, to make, which would do the work the quickest?

A. We should make them on the set of two machines, because the top and bottom must be dressed to go to New York or Brooklyn. The oil men use them rough. If they continued to use boxes as they did years ago, I would throw the Myers machine overboard. I haven't got work enough from New York and Brooklyn to run more than two sets of two, but I have oil work enough to run the eight sets of three each. When I want to make a box nice and good I put it on the other set.

121 300 X Q. How many boxes will a set of the Myers method make in a day?

A. It depends on the man; from 3,000 to 4,500 a day; there may have been 5,000 a day made, but no man can keep it up; we don't use two sets on the same kind of boxes; we can make 1,500 a day on the two sets; it depends on the kind of a box.

EDWARD C. SMITH.

TUESDAY, *April* 17, 1883.

Hearing resumed.

Same appearances.

ISAAC R. JOSLYN sworn for defendant.

Examined by Mr. CHILDS:

1 Q. What is your name, age, residence, and occupation?

A. Isaac R. Joslyn; reside at 343 West 92d St., New York; age, 49; am a machinist, manufacturer, and dealer in machinery; at present connected with the S. A. Woods Machine Company; vice-president of that company; our headquarters are at Boston, Mass., save a branch house at Chicago and New York.

2 Q. State generally the business of the house with which you are connected and the amount and kind of business which it transacts.

A. Our principal business is manufacturing wood-working machinery—that is, machinery that works wood. We run quite a large machine shop. We are one of the largest wood-cutting machine manufacturers in the United States. We are rated among the largest.

3 Q. State generally what is your own knowledge of and experience in machinery.

A. My experience extends over quite a long time—over 30 years in the business; nearly 32 years connected with this class of business. I served apprenticeship with J. A. Fay & Co., Keene,

122 N. H. Since that time I have been connected as superintendent and contractor of building machines, and a member of same firm manufacturing that class of machinery since that time.

4 Q. Do you know the parties to this action?

A. Yes, sir.

4½ Q. Did you, in and about the month of April, 1881, examine the ruins of defendant's box factory at Greenpoint, and examine any machinery found there? And, if so, state under what circumstances and what machinery and for what purpose.

A. I did; on or about that time. I was called by Mr. Smith as an adjuster to appraise the loss or damage occasioned by the fire; after the fire occurred I went there with Mr. Darlington, the adjuster for the insurance companies, and we examined the premises together; at that time we couldn't see to distinguish all and every machine that there was in the ruins on account of the cinders and rubbish, &c., that covered it partially; we notified Mr. Smith and his men that before we proceeded to do anything towards adjusting the damage he would have to remove the machinery or get it out so that we could get at them.

5 Q. State what you did and what you found.

A. Mr. Smith had his men remove the machinery into a shed where we could get at it and give it a thorough examination all through; I was present a portion of the time when they were removing this stuff to the shed; saw a large portion of it taken out.

6 Q. State, if you remember, what machines generally were saved and taken out of the ruins.

A. Parts of most of the machinery were saved; some was in a very bad condition—was totally ruined, so far as related to a machine; there was some others, as far as we could judge, were almost perfect.

7 Q. Are you acquainted with the machine known as
123 Myers' box-trimmer and Myers' nail-feeder, as shown in these exhibits—Complainant's Exhibits A and B?

(Showing exhibits to witness.)

A. Yes, sir.

8 Q. Do you remember seeing either or any of those machines, and, if so, state what ones, taken from the ruins of that fire?

A. I saw portions of both of that style of machine.

9 Q. What was their general condition at that time?

A. The nail-feeders were in a somewhat damaged condition, but in condition that could be repaired; the box-trimmers, as I remember, the central parts of the machine, the spindle frame, hanger, and most of the connections, as far as we could see, were in a damaged condition, but in a condition that they could be repaired—that is, the essential elements of the machine we found in a condition that we decided they could be repaired.

10 Q. How many of each of these machines were there?

A. As I remember, we found parts of twelve nailing machines; I couldn't state how many nail-feeders we did find, as they were broken apart so that I couldn't state how many there were; portions of twelve nailing machines; I couldn't state whether there were eight or twelve feeders; my impression was there was a feeder to each machine when we adjusted the damage, but I do not know.

11 Q. Was there more than one box-trimmer?

A. Not more than one of the Myers box-trimmers.

12 Q. How long were you in examining these machines?

A. As near as I recollect it was about two weeks from the time we commenced the examination before we reached a decision of the damage.

13 Q. Are you able now to be more specific as to the parts or portions of the box-trimmer which was saved from the fire?

124 A. I don't know that I can specify any nearer the parts that were there. If I had the machine I could state more particularly.

14 Q. Look at Defendants' Ex. Model S and state, as nearly as you can remember, about what parts or portions of that machine were saved from the fire that you saw.

A. Take this portion painted red (indicating on model). Those parts painted red, with the connections, were the main principal parts that we discovered there.

15 Q. State what are the principal essential parts of that machine.

A. Those parts painted red in combination with the guide and spring-holder on top of the tables.

16 Q. Look at the patent, Compl't's Ex. A, called "nail-feeder," and specify, as nearly as you can, the parts of that machine which you saw there saved from the fire and their general condition.

A. We found a large portion of this part of the nail-conveyor that forms the pockets—the nail-conveyor; we found the connection that connects it with the driving part of the machine that forms the ratchet; those apparently were in comparatively good condition, and, in fact, most of the mechanical movement of the carrier was in a fair condition, including this sprocket wheel that moved the pockets or sockets that carried the nails; those pockets were formed in an endless chain or belt that was broken in some parts; some of the pockets were ruined by being burnt.

17 Q. What was your decision in respect to these machines?

(Objected to as immaterial and incompetent.)

18 Q. What was done by you and Mr. Darlington in reference to this box-trimmer and these nail-feeders?

(Same objection.)

125 A. We decided that the machines could be repaired, and that the insurance companies should receive a salvage on those machines.

(Counsel moved to strike out the answer on the grounds of the above objection.)

19 Q. In your opinion could those machines have been repaired and refitted for use?

(Objected to as leading and that the witness is not shown to be competent to give an opinion.)

A. They could.

(Counsel moves to strike out the answer on the grounds of the objection to the question.)

20 Q. State whether you have had experience, and what, in repairing injured machines.

A. Yes; that has been quite a large item in our business, repairing machines that have been worn out and injured by fire—patented and otherwise; for the last twelve or fourteen years a large portion of that class of business has been contracted for and done through my own personal efforts, direction, and supervision.

21 Q. State whether, in your opinion, these machines, this box-trimmer and nail-feeder or any of them, were so injured that they could not be refitted for use again.

(Objected to as having already been asked and answered.)

A. No, sir; they could all have been repaired and fitted for use again, some of them for a very small expense, some of these machines including the whole machine. I had the nailing machine in my mind when I answered the question.

22 Q. State what was the decision of yourself and Mr. Darlington in reference to these machines in suit.

(Objected to as irrelevant, immaterial, and incompetent.)

A. We decided that there was a salvage saved on those machines in not being wholly destroyed as machines.

126 23 Q. Was any abatement of the insurance upon these machines made on the part of the insurance companies by reason of the fact that they were damaged and not destroyed?

(Objected to as immaterial and incompetent.)

A There was.

24 Q. About how much, to your knowledge?

(Objected to — immaterial and incompetent.)

A. We made a deduction on all of the machines that we found partially ruined in favor of the insurance companies of about $3,000; I don't remember exactly the figures, but something over $3,000, as I remember.

25 Q. Were this box-trimmer and nail-feeders included in that deduction?

(Same objection.)

A. They were included.

26 Q. About how long would a machine like the Myers box-trimmer and these nailing machines last used in a box factory in the ordinary way?

A. That would depend a good deal on circumstances; it is a hard question to answer. I see no reason why that nail-feeder should not run—a large portion of that mechanism should not last—for twenty-five years at a very little expense; the trimming machine would wear and become useless in less time than the nail-feeder, cer-

tain portions of it; with ordinary repairs it ought to last twelve or fifteen years.

27 Q. In the box-trimmer assume that the following were saved from the fire: the adjustable and self-adjusting cutter heads, with washer or gauge, the adjustable and self-adjusting hangers or arms, two spindle pulleys, two steel spindle steps, and the two steel spindles and two shaft boxes, and assume they were all used in refitting the machine except the steel spindles and the washer or gauge, and that the following were put in new: six common iron pul-
127 leys, with two shafts and two supports, a wooden frame or table, two spindles with a gauge, and two common iron side bars called guides, in your opinion, was that machine repaired or made new?

(Objected to as leading.)

A. Repaired.

28 X Q. Assume in regard to nine of Myers' nail-feeders that the following were saved: All the tooth traction pulleys and shafts, all the supporting pulleys and their shafts, and all the supports for the pulleys; about a half of all the ratchets and pawls, and about a third of the nail receivers or conveyors, and all the connecting rods and part of the supports for attaching the feeder to the nailer, nailing machine, and that all these things were used again, were those machines, in your opinion, repaired and refitted for use or were they reconstructed and rebuilt?

(Same objection as to the preceding question.)

A. Repaired and refitted.

Cross-examined by Mr. KINGSLEY:

29 X Q. Did you appear there at the fire for the purpose of acting for Mr. E. C. Smith as adjuster?

A. I was engaged to go there by him to adjust the damages on the machinery for him.

30 X Q. Do you know the extent of the machinery which was in his shop at the time of the fire and its value?

A. I had a general idea of what he had in his shop before the fire. After the fire he furnished me a complete schedule of what he claimed was in the shop at the time of the fire.

31 X Q. Do you know what became of that schedule so furnished you by Mr. Smith?

A. I do not.

32 X Q. Did you use it in the adjustment with the insurance companies as a guide made for his claims against the insurance companies?

128 A. Yes; I used that as a memorandum to guide me in finding the machines and arriving at a description of the machines.

33 X Q. And also to ascertain the losses occasioned by the fire?

A. To determine the valuation of the loss? I think not. I don't think that assisted me any in ascertaining the damages any further

than to ascertain the machinery and obtain a description of the machines, as some of the machines were so broken up that we could not tell by the wreck—separate them to tell how many of each part or kind there were—without this memorandum.

34 X Q. Did that memorandum enable you to know what kind of machines and what number that were in the building at the time of the fire?

A. I had a schedule or memorandum sworn to by one of Mr. Smith's men who claimed to know what machines were in the place. That schedule was made upon paper similar to this (indicating description of the machines), common legal cap folded together.

35 X Q. Do you know whether that paper was delivered to the insurance companies?

A. Not the copy I had, I don't think.

36 X Q. Do you remember any footings of that paper?

A. I can't state the number of machines stated in that list. I would not undertake to say how much they footed up to. To the best of my recollection, it amounted to about $42,000 valuation, more or less.

37 X Q. How much was paid?

A. I don't remember, but my impression is about $28,000, possibly $28,500; it don't vary much from $28,000.

38 X Q. Was the amount paid Mr. Smith by the insurance companies what was regarded as the loss on the machinery by its destruction and its injury?

A. It was. That was the amount allowed for having it re-
129 paired and fitted for use—that is, repaired, refitted, and replaced as good as it was the day before the fire; that was my idea.

39 X Q. How much was allowed for salvage on the whole machinery, as you use the word, as near as you recollect?

A. I can't remember just the exact amount that was deducted for what we found there, as I have no memorandum of the figures; as I remember it, it was something between three and four thousand dollars.

40 X Q. What do you mean by salvage?

A. If a machine is insured for $400, receives damage by fire of $200, the insurance company is entitled to a salvage of $200 on that machine. This answer is to represent what I mean by the word salvage.

41 X Q. Did Mr. Smith represent to you that all this patented machinery was an absolute loss, and request to have is so allowed in the adjustment with the insurance company?

A. My recollection of it is this, that Mr. Smith felt that his loss amounted to more, as a whole, than he was insured for; at that time I didn't know how much insurance he had on the machinery. This was when I first went to adjust the loss. My first impression on seeing the ruins was of a complete total wreck—total loss of the whole machinery; that was my first impression of the machinery. When we came to get the machines out of the ruins we found they were in fair condition; some could be repaired at comparatively little expense.

42 X Q. Did not Mr. Smith represent to you that the machinery in that building was a wreck, and that he ought to be allowed by the insurance companies the full valuation?

A. I can answer the first part of that question. To the first part of that question I should say that he did say to me it was a total loss when I first went there.

43 X Q. Did he not insist that he should be paid for all
130 his machinery up to the time of the adjustment as a total loss, and ask you to maintain that position with the insurance agent?

A. I should say he didn't insist on anything of the kind; but he gave me the impression by what he did say to me that considering there was some salvage on some parts of the machines, that his loss was actually greater than the amount of the insurance.

44 X Q. And did you also agree with him?

A. No, sir; I didn't agree with him.

45 X Q. What part of the machinery was there salvage allowed on?

A. As I remember the matter, on twelve nailers and three trimmers and one printing press. That includes the largest portion of the machinery, as I remember it, that the salvage was rebated on.

46 X Q. Did your firm supply certain machines to Mr. Smith which he had at the time of the fire?

A. No, sir; we never sold any complete machine to Mr. Smith before the fire of any kind.

47 X Q. Did you see in the ruins any planers; if so, how many?

A. I did see planing machines—I should say six or seven, as near as I recollect; I won't be positive about the number.

48 X Q. Were they destroyed by the fire?

A. Most of them were pretty badly damaged—not fully destroyed; some of them could have been repaired, I think.

49 X Q. State what other machines you saw in the ruins or afterwards; how many of each, and in what condition they were.

A. I remember parts of twelve nailing machines, three trimming machines, one Myers, and two of another patent—I forget the name at present—and my impression is, I saw three printing machines, cut-off saw machines, and resawing machines and planers; the number I won't be certain about; my impression is, six or seven planers and three or four resawing machines, as I remember it.

The nailing machines and the printing machines and the
131 trimming machines were in much better condition than the planing machines and the resawing machines.

49½ X Q. Were all these machines more or less injured by the fire?

A. Yes.

50 X Q. Were any of them totally destroyed for use as machines?

A. Yes.

51 X Q. How many and what ones?

A. According to my judgment and Mr. Darlington's, they were

all, excepting the ones I have specified as the companies' being allowed salvage on.

52 X Q. State on what machines you allowed the salvage of about $3,000 and the amounts on each.

A. To the best of my remembrance, it was on twelve nailing machines, three trimming machines, and one printing machine. The largest part of the salvage was allowed upon these machines.

53 X Q. What was the balance of it?

A. The balance, as I remember it, was allowed on the balance of the machinery in bulk as old iron.

54 X Q. Can you state what amount of old iron there was allowed?

A. I cannot.

55 X Q, Was there considerable of old iron?

A. My impression is there was about 70 tons of old iron, as I remember it; we estimated it at about 70 tons. The old iron was not weighed until the adjustment was made.

56 X Q. How much was old iron worth per pound at that time?

A. $15 to $18 a ton, according to quality, delivered. We estimated this as much lower than that; how much I do not remember.

57 X Q. Could you tell from what machines this old iron came?

A. I couldn't answer that question positively without the schedule of all the special machines it came from, but it comprised all of the machines and fixtures, shafting, pulleys, and hangers that
132 were taken out of the ruins after the fire, aside from these machines that I specified that were allowed salvage on.

58 X Q. What parts of the machinery generally comprised the 70 tons of old iron?

A. There were several tons of shafting, pulleys, and hangers. The planing and resawing machines was another large item of old iron. A large portion of these machines were cast iron—the planing machines and resawing machines.

59 X Q. Did you see a steam-engine on the grounds?

A. Yes, sir; on the premises.

60 X Q. Was it injured by the fire?

A. Very trifling, if any.

61 X Q. How much salvage was allowed on that?

A. I do not think that was on my list at all; I think the engine was separate.

62 X Q. The engine was embraced in the insurance, was it not?

A. I do not know whether it was embraced in the insurance or not; to the best of my recollection, it wasn't on the list.

63 X Q. Did you examine it as an adjuster?

A. No, sir; not as an adjuster.

64 X Q. If it was in the insurance policy and not injured, so much would be allowed for salvage, would it not?

A. I suppose it would.

65 X Q. How large an engine was it?

A. The dimensions I am not able to state; my impression is it was about 300 horse power. I am not able to state about the boiler;

in a factory of that kind it is a large engine, and the boiler would be likely to correspond.

66 X Q. State what machine you saw in the ruins that was intact and in no way injured by the fire, if any.

A. I didn't see any in that condition.

67 X. Q. Was the machinery and the machines which you examined bent and warped by the fire and water, more or less?

133 A. Some of the machines were badly broken; some others were not so badly broken, but warped and twisted badly, and they were in various conditions all over the ruins; some not damaged essentially, to all appearances, and others entirely ruined as machines.

68 X Q. How much were the pulleys—what condition?

A. Most of the large pulleys were broken or badly twisted.

69 X Q. Were any of them unbroken and untwisted that you examined?

A. We found a number of small pulleys that were whole and to all appearances perfect or nearly so.

70 X Q. Were they as good as new?

A. By refitting they would be just as good as new, or repolishing, you might say.

71 X Q. Were they worth as much as old iron or not?

A. I think in some cases they would be more valuable than at old-iron price.

72 X Q. Were they not worth as much as iron castings?

A. Some of them might be as much value to refit again as new castings; perhaps in some cases more than new castings.

73 X Q. How do you refit a pulley that is not bent or broken?

A. Some cases we turn the surface over; others by filing and polishing the surface is all that is necessary to make it as good as new again.

74 X Q. Why are they not as good as new castings?

A. In some cases they are; in others they are not.

75 X Q. Why not in some cases?

A. In some cases there is more labor in refitting a burnt casting than in fitting up a new casting.

76 X Q. I didn't ask you as to these that are burnt—bent or warped or broken.

134 A. Such castings are just as good when not injured in any of those three ways.

77 X Q. Why was not a claim made for salvage on those?

A. On what do you refer to?

78 X Q. The preceding question I refer to.

A. From the fact we didn't have any to make salvage on except those I have stated we had salvage on.

79 X Q. You state that some small pulleys were as good as new by refitting; was any salvage allowed on those or not?

A. My impression, as I remember it, the pulleys that were found were not bent and twisted so as to make them, to all intents and purposes, useless, as pulleys were connected with the machines that I have stipulated that we did not allow salvage on; there might be

some hangers and some pulleys that were worth more than old iron that were included in the old-iron price in making the adjustment.

80 X Q. If that was done, then Smith would make some money by the operation of the adjustment, wouldn't he?

(Objected to as immaterial.)

A. I cannot understand that he would.

81 X Q. What became of the schedule of the machinery on the premises?

A. I don't remember seeing it since the adjustment of the loss; then it was in my possession, and I supposed I had it until about two or three weeks ago; I have no distinct recollection of returning it to Mr. Smith; my impression is that it has got in with some papers that were burned.

82 X Q. It was a paper that belonged to Mr. Smith?

A. Rightfully belonged to him after we were through. I offered it to Mr. Snow, one of his men, after we were through. At the same time asked him if I could keep it as a record. My im-
135 pression is that he allowed me to keep it. Mr. Smith had no objections to keeping it.

83 X Q. How long since you have worked in a machine shop?

A. To work regularly in a machine shop, it is about 16 or 17 years; since that time I have worked at different times all the while making and repairing machinery.

84 X Q. At what kind of machinery have you worked at?

A. Planing machines, molding machines, sawing machines, and most all the principal variety of wood-cutting machines; that comprises about the extent.

85 X Q. Have you served a regular apprenticeship at any machinery?

A. Yes; in wood-working machinery.

86 X Q. Did you serve as an apprentice in a machine shop to learn the trade of a machinist?

A. Yes.

87 X Q. Where.

A. Keene, N. H.; with J. A. Fay & Co.

88 X Q. How long did you serve?

A. About three years and nine months, as near as I remember.

89 X Q. What was their line of machinery?

A. Wood-cutting machinery.

90 X Q. Can you state how many machines of different kinds were found by you in the adjustment of the insurance?

A. I cannot state the exact number without the schedule.

91 X Q. Can you give from your recollection the essential parts of each kind of machinery so examined after the fire?

A. I couldn't state in detail at this time all the different parts of the different machines fully.

92 X Q. Describe and give the essential parts of the nailing machine?

(Objected to as incompetent and immaterial, and that wit-
136 ness is entitled to have the model or the patent first placed in his hands or before him.)

A. I could give an answer in a general way, what I should consider the vital elements of the machine.

93 X Q. Can you remember the separate parts of the nailer, so as to state them accurately, after two years, without reference to any model or patent?

A. I wouldn't want to attempt to specify each and every part, bolt, and nut without the model or patent in my hands, after the lapse even of one day.

94 X Q. State what parts of the Myers trimmer you saw in the ruins or after.

(Objected as already answered.)

A. I couldn't specify every piece and part; could state in general way what I saw. I saw the cutter head, spindle frame, the spindle, the cutter head and its connections, the guide bar or rest with the spring-holder connected with the self-adjusting cutter head, as it is called—the vital parts of the machine, the essential elements as I would view it as a practical man.

95 X Q. Were all the vital parts of the box-trimmer saved from that fire?

A. As I remember, we found what I state connected with the cutter heads and central iron work of the machine?

96 X Q. What part of the box-trimming machine did you not find?

A. We didn't find the frame that carries the work and some of the pulleys. I wouln't state that that was all that was missing, but, as I remember now, that is all we didn't find.

97 X Q. Was there any driving machinery saved?

A. I don't get your meaning.

98 X Q. I mean the operating mechanism?

A. The shafting and pulleys that drive this particular machine? I couldn't state whether that was saved or not.

137 99 X Q. Or any of it?

A. I don't remember that it was or was not.

100 X Q. Have you ever seen Myers' trimmer running or examined it except in the ruins?

A. I have.

101 X Q. Where?

A. At Smith's factory before the fire, several different times.

102 X Q. Do you remember with how many nailers the box-trimmer was working at the several times you saw it?

A. I couldn't state how many, not knowing the arrangement of the working of these things.

103 X Q. Did you know that the nailers run in sets or not, in connection with a trimmer?

A. I knew they ran in sets.

104 X Q. Did you notice at any time, do you recollect, how many nailers run with the Myers trimmer at Smith's shop?

A. I can't answer it asked in that way—can't answer how many were running; but don't know if they were connected with that machine. The most I saw running at one time was nine.

105 X Q. Do you remember if you saw more than one trimmer running at that time?

A. To the best of my recollection, I never saw but one trimmer of this kind running in that shop.

106 X Q. Is it not difficult for you after two years to say in what condition the several parts of each machine was in when you examined them, as you have stated?

A. I have a very distinct recollection of the general way that we adjusted the damage to the machinery as a whole, as the insurance adjuster and myself were working at it quite a long time. I spent more time in figuring that matter over than I ever done in any other case where I have been called as an adjuster, doing the same business as we did then. I could not be able to state any more definitely than I have done the damage to the machines—each part.

138 107 X Q. Can you state what was allowed as salvage on the Myers feeders in that adjustment, or if any was allowed?

A. I can't state the amount that was allowed; there was an amount allowed.

108 X Q. How in regard to the three box-trimmers?

A. I can't state the amount, but those were included in the salvage.

109 X Q. What other machines besides those were included in the salvage?

(Objected to as already answered.)

A. I cannot state the number of machines that were called the Myers machines; for that reason I can't answer. I don't know how many were Myers'.

110 X Q. Was the box trimmer or trimmers that you examined in condition to be used after the fire?

A. Not without being repaired.

111 X Q. What had to be done to them in order to be used?

(Objected to as already answered.)

A. As I recollect, they needed a new frame; part of the pulleys, I remember distinctly, they were not there, and the machines couldn't be worked without. The belting also we didn't find; there would have to be some refitting about the cutter heads, but these required to be new to make the machine in working condition.

112 X Q. Would some of the parts have to be remade in order to run the box-trimmer as you saw it?

A. We didn't find any part of the frame—no part of the belting.

113 X Q. The receiving pulleys couldn't be mended?

A. We didn't find any in condition to be mended without more expense than it would cost to make new ones.

139 114 X Q. Could the parts that were entirely destroyed by the fire be repaired or not?

A. If they were entirely consumed I don't think they could be repaired, like the frame of the machine.

115 X Q. What do you call repairs in machinery?

A. What I should term repairing a machine would be taking it with its essential elements, refitting these, and adding such parts as would make the machine in order to run again.

116 X Q. If some of the essential elements of the machine are destroyed, and you had to repair those parts in the machine in order to restore it to running and working condition, would you call that repairing the machine or not?

A. This machine in question, as I understand, the elements we had that were in condition to be repaired were extensive enough to convince me that the machine could be repaired beyond question.

(Counsel moves to strike out answer as not responsive.)

A. Yes; I would.

117 X Q. What is the difference between repairing a machine and rebuilding?

A. Repairing is supplying unimportant parts and a portion, perhaps, of the essential elements of a machine. Rebuilding is producing all the essential elements and functions of the machine; but with a machine of three important parts, to illustrate, and one destroyed with some of the unimportant parts connected with it, the destroyed part with the unimportant parts supplied, I should term repairing instead of rebuilding.

118 X Q. Supposing a machine has three essential parts and two of them are destroyed with some minor pieces, and you were to replace them, would that be repairing or reconstructing or rebuilding?

A. I should call it repairing as long as any vital part of the machine was in existence capable of being repaired.

140 119 X Q. When a man sells a machine, if the purchaser would not, if it failed in part, have a right to repair for that occasion, and so keep on and keep the machine in perpetual operation by remaking it?

A. I think he has a perfect right to replace and repair that machine if he does not renew or replace the essential parts. The ordinary wear and tear he has a perfect right to repair. There might be some break or smash up, too.

120 X Q. What do you define "to repair" to be in mechanism; is it not to mend and not to make new?

A. It is to refit and to mend by supplying such parts as are worn and destroyed which have to be supplied by new parts.

121 X Q. What do you call to reconstruct a machine?

A. It is to rebuild or produce to a certain extent all the principal elements of the combination of the machine.

122 X Q. If it does not produce all the principal elements of the machine, then, you call it repairs?

A. If we have the principal elements to start with I call it repair. If we produce new the principal elements of the machine, all the

important mechanical elements of the combination, I should call that rebuilding or reconstruction.

123 X Q. To reconstruct a machine is it not to rebuild or make new?

A. No; not entirely.

124 X Q. What is it, then, to rebuild or make new?

A. That is to construct the machine with all the elements combined from the bottom.

125 X Q. Do I understand you to say that a machine is repaired when it does not embrace all the elements with which the original was constructed?

A. Yes; if I understand the question correctly. It is not necessary to combine the entire combination to make it a repaired machine.

126 X Q. Do you mean to say that a machine may not be made entirely new instead of being repaired?

141 A. You may supply some new pieces or parts of the combination and still have a repaired machine, as you can put a new heel or bottom on your shoe, but it is a repaired shoe—mended, although the parts added are new.

127 X Q. If you have nothing remaining of a pair of boots but the tops or legs would you call those boots repaired or made new by supplying the bottom anew?

A. I think in that case we are getting to a point where we supply an important element of the boot. I shouldn't say they were new. If I was going to have a mechanical term I should say they were reconstructed or rebuilt.

128 X Q. Were the feeders that you saw after the fire broken and destroyed in parts or not?

A. Yes.

129 X Q. Were essential parts missing or destroyed by the fire?

A. There were some of the nail-receivers or sockets that were destroyed, as I remember.

130 X Q. Was not the endless chain or belt, as you remember, broken and in parts destroyed?

A. Yes; broken apart.

131 X Q. Were not some of the driving mechanism connecting the feeder with the nailer also missing or destroyed?

A. We didn't find all of those complete.

132 X Q. Did you find one of the Myers feeders, as you now recollect, that you can say was complete and could have been worked after that fire without repairs?

A. I don't think there was one of them that could be used without having something done to it.

133 X Q. Had not these feeders to be in some parts made new—some parts of the mechanism?

A. I think some parts of each machine had to be supplied with new parts.

135 X Q. Do you remember all the parts of the feeder and of every machine you saw?

142 A. I can't remember all the details of the feeder—every pin and link—to specify them; general knowledge I have.

136 X Q. Do you say now you can state, from recollection, positively what parts of the feeders were saved from the fire and what were injured and destroyed?

A. I can't state the exact missing parts; what I do remember is that the socket that carries the nails and the links that carry it were what seemed to be more or less damaged; they were separated—broken apart—the carriers or nail-receivers.

137 X Q. And were the nail-feeders disconnected or broken?

A. The sockets on top the nail-conveyors were broken apart; some burned or melted through. I knew by the looks of the iron there must have been a powerful heat.

138 X Q. Were you informed that the fire department threw on water?

A. Yes; I could tell that from the machinery; it breaks the cast iron up pretty generally to throw cold water on heated iron. There was a good deal of this machinery so injured, I judge; the large machinery particularly.

139 X Q. Were the planers all destroyed?

A. We decided they were; they were built of wrought and cast iron and steel.

140 X Q. What caused their destruction?

A. Intense heat and water thrown on them. I think some would have been destroyed without water, for the cast iron was melted.

141 X Q. Were the nailers injured in the same way?

A. No; in almost every instance they were whole.

142 X Q. How do you account for that?

A. It is a fact I am unable to account for, coming down as they did from the second or third floor and remaining intact as they did.

143 X Q. Were these nailers about the same strength as the planers?

143 A. Their combination makes them stronger; they will stand more heat than the planers would.

144 X Q. What proportion of this machinery was warped by the heat and contraction?

A. I could not state exactly; a large portion was more or less affected.

145 X Q. Were the other two box-trimmers in about the same condition as the Myers?

A. They were in a more complete condition, for they were all of iron—no wood—so the frame and all was complete.

146 X Q. The box-trimmer of Myers, as you saw it, was all in parts after the fire?

A. Yes; some of the parts together.

147 X Q. Look at the parts of the machine here and say if the fragments constituting a portion of the Myers box-trimmers represent just what you saw after the fire.

A. Those represent a portion, as I remember, that I saw there;

the castings are like those I saw, but there is not as much as I saw after the fire. The spindles and frames and cutter heads were together.

148 X Q. What do you say is necessary to supply what you did see after the fire of these parts?

A. The spindles, cutter heads; that is all that I think of just now that these don't represent—those things that I remember seeing there that I don't see here.

149 X Q. The parts that you saw after the fire were separate like these here?

A. Yes; but not just as those are.

150 X Q. Were they at all connected together and holding together?

A. Not as I remember; they were separate.

Redirect by Mr. CHILDS:

151 Re-D. Q. Were not the parts that are usually attached to the spindles thus attached after the fire?

144 A. The pulleys and cutter head were connected together in the frame, as I remember, and attached to the spindle.

152 Re-D. Q. Was not the hanger, the cutter head, and the spindle all connected?

A. Yes.

153 Re-D. Q. Did you make a careful examination of these machines and their various parts at the time of the adjustment after the fire, including the machinery in question here?

A. I did; went into it very minutely; got all the parts of all the different machines together that we thought there was anything left to be repaired; had the machines separated from each other, so we could see all the parts of each machine.

154 Re-D. Q. And after such examination at that time what was the decision to which you and Mr. Darlington came as to these machines?

(Objected to as immaterial and incompetent.)

A. We decided that the insurance company were entitled to a salvage on those machines, and so made returns to the companies and Mr. Smith.

155 Re-D. Q. And on what ground was that salvage to the insurance company awarded?

A. Principally on the machines that I have mentioned, and the patent on them that Mr. Smith would have the benefit of without paying anew for the patents, and for that reason the insurance company insisted on receiving the benefit of that amount—a certain amount as salvage on the machines.

156 Re-D. Q. Was the amount of this salvage finally arrived at as a lump sum after discussion between you?

A. Yes; after several meetings and consulting and investigating we finally decided on those facts.

157 Re-D. Q. In those cases in your cross-examination where you have spoken of twelve nailing machines saved from the fire and

their general condition do you or not mean to include these nail-feeders that were saved from the fire?

145 A. I do include those as a part and parcel of the machines.

158 Re-D. Q. You spoke of there being one trimmer running in Smith's factory before the fire in connection with nine nailers; as you saw it, do you mean to say that there was not or might not have been running at the same time another trimmer?

A. There might have been; as I remember it, I didn't see but one of this kind.

159 Re-D. Q. Was it not for Mr. Smith's interest to have the damage on his machinery adjusted at a total loss?

A. I think it would have been for his advantage to get the whole amount of money.

160 Re-D. Q. Did you do all you could to get his insurance money?

A. Yes; I did all I fairly could in representing him, as I thought his damage was really, as a whole, something more than what he received.

161 Re-D. Q. State whether or not Mr. Smith acquiesced in your views that these machines could be repaired.

A. He did, after a good deal of persuasion from me.

162 Re-D. Q. Would the fact that a carrier, so called, leading to the box-trimmer was afterwards or not made new and used in connection with the box-trimmer change your opinion as to the machine being repaired?

A. No; I don't think that would.

Recross by Mr. KINGSLEY:

163 Re-X Q. Did you notice that any essential parts of the Myers box-trimmer or feeder were necessary to be repaired in consequence of being worn, at the time of your examination, after the fire?

A. We didn't get at the bearings and wearing parts of the machine enough so that I can answer that question; I didn't see any parts that were worn.

Adjourned to Tuesday, April 24, 1883.

146 TUESDAY, *April 24th*, 1883.

Hearing resumed.

Same appearances.

Cross-examination of ISAAC R. JOSLYN resumed.

By Mr. KINGSLEY:

164 X Q. You do not recollect, then, that any parts of the box-trimmer and the Myers feeders were so worn as to be thrown out in making any of the repairs of the machine, as I understand you?

(Objected to as already answered.)

A. To the best of my recollection the answer already given on that point is all that I remember in connection with it; we didn't

get at the parts sufficiently to see that that was the fact; it might have been and might not have been.

165 X Q. You say you finally made a compromise in a lump sum. Please explain what you mean by a lump sum—what it related to; and also the compromise with the insurance company.

A. There was a difference of opinion between Mr. Darlington, the insurance adjuster, and myself as to the value still in these machines I have described as there being a salvage allowed on. I insisted on Mr. Smith's receiving a certain sum, which amount Mr. Darlington objected to, and we finally agreed to split the difference, as we expressed it, which was the very best, as he said, his companies allowed him to do, and we finally settled on the sum which that amounted to which Mr. Smith should receive, which amount was, as I stated before, about $28,000.

166 X Q. To what machinery was there a difference between you and Mr. Darlington—as to the whole machinery or any particular part—and what machinery did the compromise cover, and on what did you make the lump, as you call it?

A. The principal machines that we differed on the amount was the 12 nailing machines, three trimming machines, two printing machines; more particularly one printing machine there was
147 a difference on; these were the principal machines, except what we considered as old iron; the compromise or lump sum referred to actually included all the machinery and fixtures referred to which the policies covered.

167 X Q. What do you mean by fixtures?

A. Such things as hand trucks and belts; such things as string pieces to attach hangers to; such as shipper handles, connections, and various other things I could mention as supplies around a box factory of that kind.

168 X Q. Anything else you embrace as fixtures?

A. Well, we would call oil cans and such small tools as used—wrenches and bell punches, &c.—might be included as fixtures or supplies. Some of these things I mention some mechanics would term supplies instead of fixtures; the insurance policies usually contain such a clause in reference to "fixtures and supplies."

169 X Q. What was the valuation of these fixtures or supplies?

A. I don't remember.

170 X Q. These items that were on the schedule of salvage, were they not included in the final settlement and lumping of insurance?

A. As I remember, I call to mind some of them on the schedule, and, as we had a very complete schedule, I have no doubt that all that class appeared in the schedule, but I can't tell how much was allowed in the insurance for supplies or fixtures. Trucks were embraced as fixtures; do not remember how many there were or their value.

171 X Q. Do you think as much as $500 allowed for fixtures and supplies, or less or more?

A. I don't remember.

172 X Q. Can you state how much was allowed on each of these kinds of machines—such as the nailer—in this adjustment?

(Objected to as already answered.)

A. I cannot remember the exact amount on each machine.

148 173 X Q. Did you know the valuation of these machines at the time of the adjustment?

A. Most of the machines I knew the market price of at the time; some few that I didn't know the selling price of at the time that we adjusted the damage on, but did know by the schedule what Mr. Smith claimed the machines cost him with all the fixtures.

174 X Q. Do you remember what was allowed on the nailers or what their valuation was?

(Objected to as before.)

A. I don't remember; can't state.

175 X Q. Can you state as to the planers?

(Same objection.)

A. I can't remember the valuation or the amount on any of the individual machines, not even the Myers machine; we arrived at the damage in that way, that we could not have told the amount after the compromise on any individual machine.

176 X Q. Any style of machine; could you have told what was allowed on any style of machine?

A. No; not on either—either kind or style—after the compromise.

177 X Q. Assume that the Myers machinery in that shop at the time of the fire cost Mr. Smith $1,150, what would be the proportion of loss that Mr. Smith sustained on that machinery upon the basis of your settlement?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I could not answer that question.

178 X Q. Except as to the old iron, did you get at the losses by the actual valuation of machinery in that shop, or to the stated valuation by Mr Smith, as the adjuster for him?

A. I arrived at my valuation upon my own judgment as a practical machine man and what I considered a fair valuation in the market for that class of machinery, and I arrived at the damage in the same way, after viewing the condition that the machin-

149 ery was in after the fire, as a practical man having a large experience in the same line of business before.

179 X Q. How much did you agree that the valuation of the property was at the time of the fire—before the fire?

A. I do not remember the exact amount.

180 X Q. Was the valuation found between you and the adjuster?

A. I don't think we agreed on any exact amount of valuation before the fire.

181 X Q. Did you, as to valuations after the fire?

A. We finally agreed to compromise on the amount that was afterwards allowed, $28,000; that is the nearest we came to it.

182 X Q. And the salvage allowed was about $3,340?

A. Yes.

183 X Q. Do you remember the amount of insurance on the property?

A. Not exactly; as I remember it, it was over $30,000, but I can't state exactly.

184 X Q. In getting at the amount allowed in the machinery that you speak of you would deduct the seventy tons of old iron, would you not, to ascertain the amount at the price you stated the old iron was valued at per ton?

(Objected to.)

A. In making up our estimate we would consider the old iron of a certain value, whatever there might be of it; we did not agree on exactly seventy tons of old iron; the figures were not made up on that basis. I estimated seventy tons, as I remember; others estimated differently; there was a certain amount allowed for the old iron. I can't remember the exact amount, what it was.

185 X Q. Have you not stated that the agreed valuation of the old iron was $15 to $18 per ton?

A. I don't think I have; if I did I want to correct it.

185½ X Q. You estimated the old iron at $15 to $18 per ton, did you not?

150 A. Not there as it lay; as delivered to old iron yards or furnaces. I did not state it as a fact that I estimated it at that; that was my impression.

186 X Q. What do you now state it was worth there as old iron?

(Objected to.)

A. I should say some of it was worth all you could get for it, to deliver it, but I should presume $3.00 a ton would be a fair estimate to deliver it—get it out and deliver it as old iron.

187 X Q. How much of it was worth $18 a ton?

A. I can't say that any part of it was; you asked what old iron was worth, and I said $15 to $18 a ton; some of this was so badly burned that it was worth nothing.

188 X Q. How much do you say was in such bad condition?

A. A very small percentage was worthless—so small that we didn't figure it that way.

189 X Q. Was the iron weighed so that you knew how much there was?

A. It was not; it was merely guess-work on our part as to the amount.

190 X Q. What is your estimate of the value of that seventy tons of iron, take it as it lay there, good, bad, and indifferent?

A. I can't remember just the amount we valued this; we put a figure on it; estimated so much money; just what I don't remember.

By Mr. CHILDS:

Q. And you compromised on that?

A. We did, afterwards.

By Mr. KINGSLEY:

191 X Q. Did the proceeds of that valuation revert to Mr. Smith, whatever you put it at?

A. In making up the valuation of the amount of salvage there was in the ruins that the insurance company claimed title to, including old iron—in making up our valuation and adjustment of
151 the whole damage we took that in as an offset; there was so much left as a value to Smith.

192 X Q. Did not Mr. Smith sell the old iron himself and pocket the proceeds, and besides getting the $28,000 from the insurance company?

A. I didn't know what became of the old iron afterwards.

193 X Q. Was it not understood that the old iron should belong to Mr. Smith after the agreement on $28,000?

A. The insurance was adjusted with that understanding. My understanding is that it belonged to Smith anyway; but we made our estimate of valuation upon it to ascertain just what we had of value that still belonged to Smith.

194 X Q. What valuation do you now put on that iron?

A. I can't value it to-day without seeing it.

195 X Q. On the basis that old iron was then worth $15 to $18 a ton delivered, what was this 70 tons of old iron worth per ton delivered?

(Objected to as incompetent.)

A. I wouldn't undertake to state the exact worth, from the fact that I can't remember the exact condition of the iron.

196 X Q. From your best recollection of that old iron what valuation would you put on it per ton?

A. I can't remember what I did value it then, and I can't answer it now, because I can't remember the exact condition of the iron.

197 X Q. Assume that that 70 tons was worth $15 per ton delivered, would it not reduce Mr. Smith's loss to that extent and be deducted from the $3,340?

(Objected to as incompetent and irrelevant.)

A. No, sir; it would not. It does not necessarily follow that it should in justice, for this reason, that Mr. Smith may get his property insured for one-half the value and take the other half of fire risk himself. He has a fire that damages his property three-
152 fourths its value; the insurance companies are bound to pay the total loss to the full amount of their policies, and Mr. Smith is entitled to the benefit of the one-fourth that is not destroyed on his own risk. In this case Mr. Smith claimed that his loss was more than his insurance. In consequence the amount over he took his own risk on. That is my judgment of the situation in this case.

198 X Q. You say that Mr. Smith on the adjustment of the loss had a right to the old iron, and I ask whatever he sold the old iron for should it not be deducted from that $3,340 in getting the amount allowed on the machinery as salvage?

(Objected to as before and already answered.)

A. My judgment is it does not necessarily follow it should.

(Objected to as not responsive and motion to strike out by complainant's counsel, who asks the witness to answer by "yes" or "no," to which counsel for defendant objects.)

A. I can neither answer yes or no, for it depends on circumstances.

199 X Q. If Mr. Smith's losses as adjusted were $3,340 and he received $1,000 for old iron, as you have mentioned, would it not be proper to deduct that $1,000 from the losses that he suffered by the fire?

(Objected to as incompetent, immaterial, and irrelevant.)

A. I think that was part of the assets that was left belonging to Mr. Smith.

200 X Q. How many pulleys were missing at the time you observed the box-trimmer?

A. I don't remember.

201 X Q. If the parts were disconnected at the time you saw the box-trimmer after the fire how can you tell whether those parts belonged to the Myers trimmer or the two Bowers trimmers?

A. In making the adjustment we depended on Mr. Smith's men,
153 who were acquainted with the machines, to assemble the parts of the different machines as far as possible and explain to us what machines they belonged to in such cases where they were separated and we did not know ourselves; but the parts generally belonging to these three different machines, the two Bowers machines and the Myers, were so entirely different that we would have no trouble in separating them ourselves.

202 X Q. But you could not distinguish as to minor parts of the two machines, could you?

A. Yes; almost to an identical piece of it.

203 X Q. Have you seen this Myers trimmer in Mr. Smith's shop since the fire?

A. No; I don't remember that I have.

204 X Q. Had you made either trimmers or feeders like the Myers trimmer or feeder?

A. No, sir; not for that particular purpose.

205 X Q. Had you ever made either of those machines in your business—your firm?

A. No; not that same machine.

206 X Q. You say that you knew the market value of all this machinery?

A. I stated that I knew of a large portion of it. I didn't know the selling price of every single machine that was in there at the time.

207 X Q. Was there anything to call your attention at the time of the adjustment to these Myers machines any more particularly than to other machines in Smith's shop, and is your recollection about the same as to them all—their condition after the fire?

A. There was this fact that I recollect, or facts, that the insurance companies claimed these Myers machines, with some others that I have specified, were all patented machines; a large portion of the price paid for them was for the patent right; amongst them were the nail-feeders and the trimmer of Myers; they insisted that the full amount paid for patent rights belonged to the insurance companies on all such machines as we found that, in our judgment, could be repaired.

154 208 X Q. What other machines had patents on that were in the fire in Smith's shop?

(Objected to as before.)

A. I do not remember whether I knew there were any others except what I have stated; these I remember particularly, because our whole agreement on settlement of loss arose on these facts I have stated.

209 X Q. Do you remember that Myers' machinery only cost Mr. Smith about $1,150, so put down in his estimate—the machinery on which these suits were brought?

A. I didn't know at the time by the schedule what machines were termed Myers machines. I never knew since how many machines Smith had that he got from Mr. Myers; the value put on any individual machine on the schedule I don't remember.

210 X Q. Do you not remember that the nailing machines were patented machines—12 nailing machines?

A. I remember distinctly that we so understood it—that the nailing machines and all three trimming machines were patented machines.

211 X Q. Do you not remember that Smith's machinery running at the time of the fire was all covered by various patents?

A. I don't know that to be a fact; did not know it.

212 X Q. Whatever machinery was covered by patents at the time of the fire were you not informed by Smith at the time of that fact, however extensive it may have been, and didn't that appear as the basis of your adjusting losses from the fire.

A. I don't remember that he informed me or that I knew in any way of any patented machines but those I have spoken of.

213 X Q. If other machines were patented would you not have been informed at the time of the adjustment of that fact?

(Objected to as before.)

155 A. I don't know that I would.

214 X Q. Was there any difference in the adjustment of the losses, whether any machines were patented or not?

A. There would be if the patent made them more valuable and they were totally destroyed. We estimated our valuation of damage partially on the cost of replacing it.

215 X Q. If partially destroyed how would it be—the same or not?

(Same objection.)

A. If the principal elements of the machine were in condition to be repaired the fact of their being covered by a patent would not change my valuation of replacing it again as against a machine of the same class not covered by a patent.

216 X Q. In making the adjustment do you take the price of the patented machine as sold by the patentee or what you take to be actual cost price of a machine in estimating the losses by fire?

A. In the first place, you take the selling price by the patentee. In a total loss it is so adjusted, less the reasonable discount for wear and tear on a machine for the time it has been used. Then, on examination of the machine, if I found the larger portion of the principal elements of the machine there, I should change my basis and estimate the damage the same as I would on any other machine that is not patented.

217 X Q. Did you know the essential parts of the twelve nailers at the time you made that adjustment and the value of the machine as sold by the patentee?

(Same objection.)

A. I did know the essential parts, and we got the selling prices of the machines at the time, as I remember now.

218 X Q. Give the essential parts of the nailer.

(Objected to as before and as not any one of the machines in controversy.)

156 A. Take the platform that receives the box, the nail receiver (I don't know as that is the term of it), the plunger that drives the nail, the driving shaft and the connection, the cams that drive the plungers, driving gear and connections that drive the nail-feeder, the chains or links that form the sockets for the nails. The feeders on these machines were just as much a part of it as the box that held the nails was just as completely connected with it and formed a part of the machine, so far as we could see, as the driving shaft.

219 X Q. Are not the parts claimed in the patent on any machine the essential parts which determine its valuation above the cost price?

(Objected to as before and that witness does not claim to be a patent expert.)

A. That, in adjusting a loss, I should take into consideration as its features in the cost of replacing the machine again. If those elements had a market value distinct and known without the combination with the rest of the machine, then the value would revert to those.

220 X Q. Did you know at the time of the adjustment what the actual claims were on the patent for any of that machinery—what parts were covered by patents?

A. I don't know that I ever had read the patent claim at that time, but I did have a general knowledge of parts of the features claimed in the patent on some of the different machines we adjusted the loss on.

221 X Q. How did you get that knowledge if you never had read the patents?

A. Partially by conversing with parties claiming to know what was claimed on the machine.

222 X Q. Who were they?

A. I don't remember positively.

223 X Q. Did you know any further than what Mr. Smith told you himself or his men?

A. Yes; I had had conversation with several machine men before the fire and while we were adjusting the loss. I will not
157 swear I had not read the patent, but I don't now remember that I had; I read a great many.

224 X Q. You don't recollect that you ever did see any one of the patents on these machines at the time of the adjustment?

A. I could not swear positively that I did or did not.

225 X Q. Have you ever seen any of the patents on other machinery than the Myers since that time that you recollect?

A. I think I have; one I remember on the printing machine, granted to Henry Montgomery; I looked at it at that time, or about that time; that was not in this shop; I haven't seen any patent that covered machines in Smith's shop.

226 X Q. You have seen Myers' patent recently?

A. Yes; the claim on the trimmer and I think the feeder.

227 X Q. Did you see the model—defendant's model S—before your examination here?

A. Yes; or one similar to it, at Mr. Child's office. I don't remember how long ago—recently; can't say whether a month or two months.

228 X Q. How did you come to examine it there with Mr. Childs?

A. I went into his office and he had it on his desk; sat there when I went in.

229 X Q. Were you sent for by him to be a witness?

A. He had sent for me.

230 X Q. You then and there examined the model carefully with the patent?

A. I took a general look at the machine as it sat on his desk; I don't remember that I saw the patent at that time, but don't think I did; I have read it over since.

231 X Q. Did not the seeing this model at that time and the reading of the patent bring up more particularly the parts of the machine to your recollection, and could you have been so distinct
158 in your remembrance of the parts of the Myers trimmer after the fire had you not seen the model and the patents since, together with information that you received from Mr. Childs, the counsel in this case?

A. I think I could have given any day since the fire just about as full a description of what I saw as I can now, after all the information I got from the model.

232 X Q. How is it that you remember the Myers machine and its essential parts so much better than other patented machinery in Smith's shop?

A. The trimming machine I had very distinctly in my mind before it was burned on account of examining the machine to satisfy myself whether Myers was entitled to a patent on it. It is my impression that we were building a machine that contained the principal elements that he claimed in this machine as patented features. After the fire, when I came to see the parts, I recognized the principal features of the machine. As the insurance company were trying to make it appear that there was most of the value of the machine left, that caused me to examine the machine more particularly, and I have a more distinct recollection about that than of some machines we adjusted the loss of, and on account of the examination of the nailing machines and trimming machines we made, as those were the ones we had a controversy on as to the adjustment.

233 X Q. What was the controversy?

A. Between me and the other insurance adjuster as to the amount of damage on these machines. The twelve nailing machines and feeders, the three trimming machines and printing machines, were the only machines we had any controversy over as to the amount of damage that should be allowed to Mr. Smith by the insurance companies, and the controversy was to that extent calling for a very close examination to arrive at value. That is what impressed it more particularly on my mind.

(Pair of hangers or spindle frames shown, and two pulleys and bracket attachment and two beams.)

159 234 X Q. Assuming that these two hangers have base plates, do these several pieces represent what was left of what you saw of the Myers box-trimmer after the fire?

(Objected to as already answered.)

A. That doesn't represent all that I saw. I can't state all the parts that I saw or whether I saw all the parts like those, but I saw enough to convince me that the essential elements of the machine were there.

235 X Q. What parts that are represented here did you not see?

A. I can't state. I saw all the iron-work that they said was left from the fire.

236 X Q. State if, X Q. 234 being assumed, would you say that the Myers trimmer could be repaired by the parts here shown or would it have to be rebuilt?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I should say if I had all these parts with the base plates and spindle heads and cutters and springs I could repair the machines—as I saw them after the fire.

237 X Q. (Repeated.)

(Same objection.)

(Same answer.)

(Motion to strike out as not responsive.)

238 X Q. (Repeated.)

(Same objection.)

A. I don't know as I understand that question to answer it except in my own way.

239 X Q. Assume that the several parts here represented are of the Myers trimmer, and the hangers have each a base plate attached thereto could the box-trimmer be repaired by the use of these several parts or not?

(Same objection, and further as being speculative and assuming facts not proven in the case.)

160 A. I think they form important elements of the machine and could be repaired as long as the vital elements are contained; I think the machine could be repaired; it was my opinion at the time, and I have not changed it since.

240 X Q. Do those parts constitute the essential elements of the box-trimmer of Mr. Myers?

(Objected to as incompetent, irrelevant, and immaterial.)

A. They form an important element of the combination.

241 X Q. Do you think by the use of these parts that the missing parts might be supplied and made new, and still be repairing the Myers machine as first made?

(Same objection as to X Q. 240.)

A. Repair the machine to make it in working order for the purpose it was designed for—repair the original machine; yes.

242 X Q. Will you now state what are the missing parts not shown in the Myers machine? (Parts marked by tags 1 to 6.)

(Objected to as incompetent.)

A. I cannot remember all the missing parts, or all the parts that I saw after the fire, but I did see more parts than these six.

(Parts marked with tags offered in evidence for complainant. Objected to, and that no foundation is laid for offering them.)

243 X Q. Were there an equal number of the essential parts of the Myers trimmer that had been lost and which were necessary to work his machine; could not those parts also be repaired by supplying the parts new which are represented here, and still be the same machine that Myers sold to Smith?

(Objection as before.)

A. I don't understand that in a way that I can answer yes or no; I think we have the foundation of the machine here; without it you can't produce another machine; it is the most important element of the machines, as I view it.

161 244 X Q. If there were an equal number of vital parts to work that machine of Mr. Myers, could the remaining parts be made new and still have the same machine that Smith bought of Myers?

A. I answer that if we have sufficient portions or number of important parts or elements of the machine we can repair it.

245 X Q. Look at the last claim of this patent No. 201,822 for improvement in machines for trimming wooden boxes, and state if any of these separate parts shown and marked with tags 1 to 6 are embraced in that claim.

(Objected to.)

A. There is no part of it in these exhibits, unless some portion of the driving mechanism of which the shaft bearings might be considered part; I should say that is part of what is described in the specification as the driving mechanism. I find also the supporting frame of the adjustable cutter, as I understand the claim. I don't find in this claim that these answer the full claim, but with the balance of the combination I find that they are part of the claim with their connections.

245½ X Q. The brackets are the sole parts represented in the last claim of the patent?

A. Those brackets and the hanger or frame are the only parts that I should say are mentioned especially in the last claim.

246 X Q. Do you find in these parts a supporting frame or table having a chute and guard?

A. No.

247 X Q. Do you find an adjustable cutter or self-adjusting cutter or a carrier in those parts?

A. No.

248 X Q. Do you find self-adjusting guides in these parts or the driving mechanism?

A. Part of the driving mechanism is here—no guides.

249 X Q. Do you find a self-adjusting gauge to bear against the work in these parts?

A. No.

162 250 X Q. Look at the last claim of this patent and say if any one should undertake to repair one of the Myers machines with all the missing parts in that claim, except as you have stated above, would you call that, by supplying those parts anew, repairing or rebuilding over of the Myers machine as first made by himself?

(Same objection.)

A. I should say, with the important elements described in Ex. 1 to 6, I could repair it.

251 X Q. Assume that there is nothing left of one of the Myers machines but a hanger and a bracket, could the other parts be made new which you find in the last claim of the patent without reconstructing and rebuilding the machines?

(Objected to as incompetent and speculative.)

A. As long as we have any considerable portion of the Myers machine left, or the important elements of the machine, as comprised in 1 to 6, we could repair it.

Question repeated.

A. If you got down to a hanger and a bracket we arrive at a point where we have to supply some important elements to build the machine; but without the elements shown here we couldn't build a machine—these marked 1 to 6, like the Myers box-trimmer—as this was before the fire.

252 X Q. Question repeated, and answer whether or not requested.

(Objected to as already answered.)

A. I should say it was rebuilding.

253 X Q. Look at the last claim of the patent and see if any of these six pieces are named in the claim or denominated as such in terms.

A. It does not say "hanger;" they are not here in terms, but as part of the combination.

254 X Q. Look at that claim and say how many parts are named in combination.

(Objected to.)

A. I am not patent lawyer enough to answer that.

163 255 X Q. Do you find 5 or 6 or 8 distinct parts there?

A. I can't separate to make application of all the parts contained in that claim. So far as I am able to judge, I should say there are 5 or 6 distinct features of the combination in the last claim.

256 X Q. Are there one or more of them among these separate parts—1 to 6.

A. There are three, as I understand it—part of the combination that forms the self-adjusting cutter, the cutter spindle frame, the adjustable cutter frame, the spindle hanger—the driving mechanism of this is a part of it, but I haven't looked it through carefully enough to say about that, but I should judge that was here.

257 X Q. You find most of the parts missing from these parts—1 to 6—of the box-trimmer?

A. My judgment is from this, not being a patent lawyer, that half of them are missing.

258 X Q. Which ones?

A. The chute and frame; the guards are a combination of another item mentioned.

259 X Q. Do you find a self-adjusting cutter?

A. Part of the combination that makes a self-adjusting cutter.

260 X Q. Will you swear that is a part of the self-adjusting cutter?

A. I am not a patent lawyer, and I can't swear that this is a part of it, but, in my judgment, it is a part of the combination.

261 X Q. Do you find an adjustable cutter among these parts?

(Objected to.)

A. I find part of the combination that forms an adjustable cutter, the other spindle frame or hanger, and the cutter spindle pulley.

262 X Q. Do you find a carrier?

(Objected to as several times answered.)

A. No.

263 X Q. Self-adjusting guides?

(Same objection.)

164 A. No.

264 X Q. The driving mechanism?

(Same objection.)

A. Portion of it.

265 X Q. What portion?

A. Bracket for bearings.

266 X Q. Are you positive that is part of it?

A. It is my impression it is part of the driving mechanism.

267 X Q. If you had the missing parts that you speak of covered by this last claim could you repair by supplying the other parts new of the machine, and would it be the same machine from which the missing parts were taken?

(Objected to as incompetent.)

A. I could not go to work and repair that part of the machine without making new patterns; you have got to start and construct the machine from the patents. The other would be the spindle shaft and wooden frame, such as could be supplied from any ordinary shop without any arrangements for planing or constructing the machine from patterns.

268 X Q. Are not all the elements in a combination in a patent of the same importance in that invention?

A. No; I think not.

269 X Q. Does defendant's model S represent precisely the machine as working in Smith's shop at the time of the fire or since, and does it comprise all the parts of the machine you saw there or not?

A. As I remember it, it does not comprise the thing complete as I saw it working before the fire.

270 X Q. What is wanting?

A. I don't remember fully; think he had a long carrier to take the boxes away—a connection at both ends of the machine not represented in this model.

271 X Q. Do you find a chute in this model connected with the carrier?

165 A. I never fully understood what it meant by the chute in the patent; I don't remember just the arrangement where they enter and leave the machine, and I can't say if this model is just like it.

273 X Q. Is it not the case that the thinner the iron the quicker its destruction in case of powerful heat?

A. So I have understood.

274 X Q. The carriers or sockets on the nail-feeders were more or less injured by being burned out, were they not?

A. I remember that some were burned so as to ruin them.

275 X Q. About what proportion was so destroyed that they could not be used?

A. I can't state exactly; some were burned and some were broken; it would be impossible to tell without going over them.

276 X Q. Were the endless chains broken or damaged?

(Objected to as already answered.)

A. Broken apart in some cases; just to what extent I don't remember.

277 X Q. Were the supports to the endless chain broken or destroyed?

(Same objection.)

A. As I remember it, my impression at the time was there were some destroyed.

278 X Q. Was the driving mechanism connected with the nail-feeder destroyed?

(Same objection.)

A. I think it was damaged in some cases, but not altogether destroyed.

279 X Q. Can you say that you saw any of the driving mechanism?

A. I can; I did see it.

280 X Q. What was the condition of the transverse bars—broken or not?

A. What is meant by that?

281 X Q. The transverse bars in which the row of pockets is placed?

166 A. Those were broken in some cases; in many cases I saw them broken apart.

282 X Q. Were not all the bed plates broken or injured?

(All these questions objected to as already answered.)

A. As I remember it, they were not.

283 X Q. More than half?

A. I can't remember just how many.

284 X Q. Take the parts of the trimmer as here, or as you saw them after the fire, would you call them the box-trimmer, in the condition they were, or not?

A. I did call them part of the Myers box-trimmer at the time, and do now, damaged as we found it—designated it as such in our——

285 X Q. The Myers trimmer?

A. We did call it the Myers box-trimmer.

286 X Q. Take the parts of the Myers box-trimmer as you saw them after the fire, what was necessary to be done to make it a machine capable of running as it did before the fire?

A. I decided at that time that it required some new parts; I decide so now, and the parts refitted and repaired, and the combination being put together, you have the machine capable to run again.

287 X Q. Is not putting the parts together constructing or building of a machine?

A. We usually term it erecting or assembling a machine.

288 X Q. If a dozen different makers construct different parts and you put them together, who builds the machine?

A. The different makers who construct it.

289 X Q. Does the maker of separate parts of the machine or the purchaser of these parts who puts them together and constructs the machine into working condition, assembles the parts and puts it into working condition, actually build the machine?

167 A. The party that assembles the parts and puts them in a working condition is the constructor of the machine.

290 X Q. Take the several parts of the plaintiff's box-trimmer in their separate condition, is it not as much rebuilding the machine to supply the new parts in their connection as though the parts had been purchased from separate makers and assembled and put in working condition—take the parts tagged 1 to 6, I mean?

A. I wouldn't consider that he was a builder if he had the important parts we have here, from 1 to 6. I wouldn't call him the builder of the machine.

291 X Q. Mechanically speaking, what is making a machine?

(Objected to as already asked.)

A. Taking cast iron, steel, and wrought iron in a rough state, turning, planing, and fitting the parts together, making a complete combination, the working movements in such shape that you can call it a machine when completed.

292 X Q. Is not the construction of a machine the vital part of it?

A. That would enter as an important part, to construct or place together—fit together, as we term it.

293 X Q. Is the machine complete till the parts are brought together and constructed into their proper places so they would work or perform their office?

A. No.

Redirect by Mr. CHILDS:

294 Re-D. Q. Is not repairing a machine restoring it to a sound condition where it has been partially injured or worn, even if parts of it are made new?

A. I so understand it; that is my judgment.

295 Re-D. Q. Have you ever made or sold machines similar to these of Myers in this suit?

168 A. I never have, nothing similar, but I am familiar with the machine.

296 Re-D. Q. Are the parts and mechanism of these Myers machines understood and distinguished easily or not by any one familiar with machinery?

A. I think the combination of the box-trimmer and also of the nail-feeder are plain, simple combinations. No complication about them but what any ordinary mechanic would understand. They are not intricate as machines.

297 Re-D. Q. I understand you to say you do not remember what valuation you and Mr. Darlington, as adjusters, put on each individual machine in amount after the fire; state whether or not it was a repair valuation or on the basis of being destroyed.

A. A valuation on repairing, as we decided then. That related to the nailing and trimming and printing machines that salvage was allowed the companies. We arrived at a valuation of the damage on the basis of what it would cost to repair them and replace the machines as they were before the fire.

By Mr. KINGSLEY:

298 X Q. Does replacing mean repair or purchase new?

A. When I say repair and replace I mean setting them up in working order in the factory after being repaired.

299 X Q. You didn't provide, then, for buying any new?

A. We had no instructions to rule on the purchase of new machinery. It was only the damage to that which was in there before the fire.

By Mr. CHILDS:

300 X Q. And was this insurance finally adjusted on the basis that these Myers machines could be lawfully repaired?

A. It was so adjusted.

169 301 X Q. Can you tell about what proportion of the $3,340 which the adjusters abated from Mr. Smith's insurance constituted the amount which went to make up these Myers machines?

A. I don't remember so as to state. Take the nail machines and feeders combined, these twelve machines would be a large proportion of the amount.

302 X Q. You are quite positive that you did not allow Mr. Smith on this Myers trimmer and feeder as a total loss, but only on the basis that they could be repaired?

A. That is the way the adjustment was made, and it didn't occur to me, and I don't think it did to Mr. Darlington, but what they would be repaired. We finally settled on that and Mr. Smith accepted it.

303 X Q. You stated that you didn't know or remember whether there were twelve or eight nail-feeders; why do you use those numbers?

A. To convey the idea that I was not positive in regard to the number of feeders, as we found portions of twelve nailing machines, and I supposed each machine had a feeder at the time; I couldn't say whether there were nine or ten, but I supposed each machine had one.

Recross-examination by Mr. KINGSLEY:

304 X Q. Didn't the same basis of compromise obtain in regard to all the patented machinery?

A. The compromise—final settlement—was finally made on the whole in bulk, the whole schedule of machinery that we adjusted—machinery, fixtures, belting, and shafting, etc.; no stock or building in our schedule.

305 X Q. Without reference to anything in particular?

A. Then we took it without reference to any machine or part of machine on striking this lump sum; we had agreed on everything else but the nailers, trimmers, and printers.

170 306 X Q. And when you came to a final adjustment in a lump it was without any specific charge on any machinery?

A. This machinery in suit was all we had any difference over.

307 X Q. Assuming that the Myers machinery cost $1,200 to Mr. Smith, what, in your opinion, would be a fair allowance for the injuries done to it by the fire according to the basis of your insurance?

A. I don't remember the valuation of the machines in controversy near enough to answer that question. I had the injury in figures at the time, but I can't remember now what the damage was on each machine in the place.

308 X Q. If Mr. Smith got $1,000 for old iron and $28,000 from the insurance companies he got $29,000 in all?

A. Not from the insurance companies.

Redirect by Mr. CHILDS:

309 Re-D. Q. Did Mr. Smith receive in this settlement and adjustment any sum for the injury or damage to the Myers machine in suit greater than its repair valuation?

A. I could not say whether he received as much as it would cost to repair them, but I did the best I could under the circumstances, and satisfied myself that we had made a fair adjustment, considering that the machines could be repaired.

310 Re-D. Q. Did the adjusters allow to Mr. Smith in this compromise any larger sum than the repair valuation and was it not in reality a less sum?

A. My judgment at the time was that it was a less sum.

By Mr. KINGSLEY:

311 X Q. (X Q. 305 repeated.)

A. I don't remember that. I couldn't state definitely the proportion of value on any machine.

171 312 X Q. What did you estimate the loss by the fire at first?

A. My first estimate was between $30,000 and $40,000; we finally came to $28,000.

312½ X Q. You didn't think the damages more than the insurance?

A. I didn't think he could replace for the amount he got.

Adjourned to May 2d, 1883.

JUNE 1, 1883.

Hearing resumed.
Same appearances.

Cross-examination of ISAAC R. JOSLYN resumed.

By Mr. KINGSLEY:

313 X Q. In refitting the Myers machine did not Smith assemble the old and new parts of these machines so as to put the machines into a working condition, and is not that the constructing of said machines?

(Objected to as incompetent, irrelevant, immaterial, and speculative.)

A. Such of the machines as I have seen he had to supply some new parts; in such machines as I saw he did assemble some new and old parts.

313½ X Q. Wasn't that constructing the machine?

(Objected to as incompetent.)

A. My opinion is that the new parts supplied were rather unimportant parts, and to that extent I should rather consider it repairing the machines.

314 X Q. (Q. 312 repeated.) As to the machines you saw, please answer the foregoing question.

(Objected to as incompetent, irrelevant, immaterial, and as having been already answered.)

A. I cannot add anything to the answer to that question; my opinion is that it was a repairing of the machines.

172 315 X Q. Did not Smith, by his agents, Smith & Doig, in refitting said machines, have to supply new parts thereto in order to put said machines into a proper working condition, and was that not an assembling of old and new parts in making the said machines?

(Same objection.)

A. It was assembling the new parts together; new parts were supplied with the old.

316 X Q. What do you call assembling the parts together?

A. Putting the different parts of the machine together into proper position—making a machine of it.

317 X Q. Don't you call that constructing a machine?

(Same objection, and as having no bearing upon a repaired machine.)

A. If you assemble the new parts altogether I should call that constructing a machine.

318 X Q. What do you call constructing a machine?

(Same objection; also as having been already answered.)

A. Taking the parts entirely separated and placing them in proper position—connected with each other so as to make a complete working machine.

319 X Q. Is there any difference, mechanically speaking, whether the parts are partly old and partly new in their being assembled so as to be in a working condition and thus constructed into a perfect machine?

(Same objection.)

A. No; but in this case, if a man dismantled a machine and then put it together again, adding some parts to it new, in my opinion, he didn't build or construct the machine.

(Counsel moves to strike out answer as not being responsive, and question repeated.)

(Defendants' counsel insists that it is responsive.)

173 A. I can't answer that question, to improve it, any different from what I have already answered, in my present opinion.

320 X Q. The witness is asked if there is any difference in his answer there to the last question where the machines are so injured by fire that the parts are entirely disconnected from each other and assembled thereafter with new parts so as to make a working machine?

(Same objection.)

And is that repairing or constructing of a machine, in your opinion?

(Same objection.)

A. If the parts are disconnected and a large portion of the machine destroyed my opinion is it is constructing or rebuilding the machine to assemble them with new parts.

321 X Q. Have you not said on this examination that the assembling of parts and putting them into a working condition is the construction of that machine, and do you now desire to change your answer to that question?

(Objected to as incompetent and improper; that counsel should either read or call witness' attention to what he has testified, and that this — an improper method of contradicting or cross-examining the witness, and that the record speaks for itself as to what the witness has testified to.)

A. I have answered it that that was my opinion, and it is my opinion now that assembling parts into proper working condition is constructing the machine.

322 X Q. You have stated that you find five or six distinct features in the eighth claim of the combination of the Myers letters patent of the box-trimming machine, and now I request you to say if two-thirds of said distinct combination were destroyed by this fire and were made new with the old parts refitted, and all assembled together into a proper working condition as a machine, would

that be the identical machine sold by plaintiff to defendant,
174 or would it be a reconstructed machine, provided the new and the old parts had to be brought together separately in making the machine?

(Objected to on the same grounds and as being a question of law and not of fact.)

A. It might be or might not be a reconstructed machine, but if two-thirds of the machine, and that being the important parts of the machine, were destroyed, then, in my opinion, it would be a reconstructed machine.

323 X Q. How many parts of the eighth claim of the Myers box-trimmer patent could you leave out in refitting a machine under the device of repairing, in your opinion?

(Objected to as incompetent, irrelevant, and immaterial.)
Patent shown witness, who answers:

A. I cannot state just how many parts could be dispensed with.

324 X Q. In repairing a machine, if you have to supply leading and essential elements of that machine anew, would not that, as a general rule, be a reconstructing said machine mechanically where the parts have been disconnected and assembled to a working condition?

(Same objection.)

A. In a case where there is a large portion of the essential parts of the novel features of the machine made new I should say that was reconstructing or rebuilding the machine.

325 X Q. Where the invention consists of a combination of parts, and assume that one-half of those parts are entirely destroyed and the same are made new, and the old and remaining parts and the new were assembled into a working machine, is not that construction a new machine, mechanically speaking?

(Same objection.)

A. If there is no particular novelty about any one of the parts it might or might not be constructing a machine.

175 326 X Q. Aside from the question of novelty, then, what do you say to the question?

(Same objection, and also as already answered.)

A. Combination of a number of well-known mechanical contrivances, one-half being destroyed, it might then be or might not be constructing the machine, in my opinion.

327 X Q. What do you call constructing or making a machine, mechanically speaking?

(Objected to on same grounds, and also as having been several times already answered.)

A. First, in preparing in some way to produce the several different parts of the machine, preparing those parts and assembling them

and placing them in a proper working position to make a complete working machine.

328 X Q. If a machine is so injured by fire that one-half of its essential parts are utterly destroyed by fire, new parts are supplied, and the old parts saved from the fire and the new parts are assembled together and put into a machine in a good working condition, is that, in your opinion, the same machine as the one injured by the fire, or is it not a new machine with old parts used in its construction?

(Same objection.)

A. It might or might not be.

329 X Q. I ask you to state your opinion whether it would be or not.

(Same objection.)

A. If we have one-half of the essential parts of the machine saved my opinion is that it could be a repaired machine.

330 X Q. Assume that one-half of the essential parts were saved from the fire and the other half was made new and assembled together, and then assume that there is a second fire and that one-half or all the old parts used in the repaired machines after the first fire, utterly destroyed, and the same were supplied with new parts
176 to the machine so injured by the second fire, would that be, in your opinion, the identical machine sold by Myers to Smith, or would it be a new machine or a reconstructed machine after repairs thus made caused by the second fire?

(Objected to as incompetent, irrelevant, and immaterial and purely speculative.)

A. I believe there is a limit to the extent to a machine which leaves it to be repaired; just what that limit is I cannot state; it depends on circumstances. After reaching a certain point of damage I believe then if you produce a machine you reconstruct it or rebuild it or produce a new machine. I believe in this particular speculative question—I believe it to be a reconstructed machine.

331 X Q. Is not the limit or damage in repairing or refitting a machine to be controlled by the fact that such vital elements of the machine are so destroyed that the machine is not capable of working or being refitted without supplying those essential and vital parts and making them new in the construction of said machine?

(Objected to as a question of law and not of fact.)

A. It may or it may not be.

332 X Q. Question repeated and witness asked his opinion.

A. Might differ under different circumstances as to what would control that particular point—circumstances and the nature and facts of the case.

333 X Q. Do you find it easy to draw the line or distinction between repairing and reconstructing a machine, mechanically speaking?

A. Damage may approach a point were it would be very difficult to decide positively.

334 X Q. And if you found one-half of the features of a certain invention or machine destroyed and the machine was made new to that extent what would determine your opinion as to whether that was a repaired machine or not?

(Same objection and speculative.)

177 A. If such parts as were required to make the machine a perfect machine could be obtained at any ordinary machine shop or foundry, and were such parts as were in common use amongst mechanics, it would have a good deal of weight in deciding my opinion whether a machine could be repaired.

335 X Q. Do not all the parts of a very great many patented machines appear as made at machine shops or foundries or stores, and is it not the bringing together of such parts by some one individual or patentee the building and constructing of said machines, and is not that very customary in trade?

(Same objection.)

A. It is rather an unusual occurrence with a patented machine, if it could be assembled in that way from ordinary machine shops with patterns that they use in other machanical contrivances, as generally in a patented machine we find more or less different parts somewhat different and new and novel.

336 X Q. Could the Myers box-trimmer, in your opinion, be reconstructed by bringing together the different parts from different shops or foundries, or would some of the parts have to be specially made and fitted in rebuilding the machine?

(Same objection.)

A. In some of the essential parts of the Myers machine there would have to be special patterns made to construct the machine and make it a complete running machine for the business that machine was intended for, but a large number of the parts of the machine could be obtained from many machine shops, such parts as are not new or novel, such as are used in many ordinary machines.

337 X Q. Is not the novelty of the Myers machine found in the combination of the parts and their arrangements?

(Objected to on same grounds, and also there is no evidence
178 to show that there is novelty in any part of the machine.)

A. It may or it may not be.

338 X Q. What is your opinion?

(Same objection.)

A. If there is any special novelty in it, it must consist largely in that.

339 X Q. Can you tell me anything further in reference to where the schedule of the property whereby you and Mr. Darlington adjusted the losses for the insurance companies is, in the fire in defendant's shop?

A. I cannot; I don't know what became of the schedule I had.

340 X Q. Did you not return it to defendant, to the best of your belief?

A. I don't believe I did.

Redirect by Mr. CHILDS:

341 Q. In your answer to Q. 55, in respect to the quantity of old iron left after the fire, you have said, "We estimated it at about 70 tons," as appears by the minutes; is that correct?

A. That hadn't ought to be "we;" it should be "I."

342 Q. In your answer to X Q. 111, as to what had to be done to the machines in order that they might be used again, you stated, "There would have to be some refitting about the cutter heads, but these required to be new to make the machine in working condition." Do you wish to make any correction in that statement?

A. I meant to have it understood that the frame pulleys—belting had to be new.

343 Q. Was it necessary to have new cutter heads?

A. No; as I remember, I thought the cutter heads could be used.

Mr. KINGSLEY:

344 Q. You are not positive whether they could be or not, are you?

179 A. As I remember, I didn't see any reason why they couldn't be.

Mr. CHILDS:

345 X Q. Did you and Mr. Darlington at the time of the adjustment carefully examine these machines in controversy, and was it your opinion at that time that these machines could be repaired?

(Objected to as incompetent and as already answered several times.)

A. We did examine them and decided they could be repaired.

(Counsel moves to strike out answer.)

346 Q. Was a certain sum or some sum which, in the opinion of yourself and Mr. Darlington, was deemed adequate and proper allowed to the defendant on the adjustment for the purpose of repairing these machines, and was it or not allowed on that ground?

(Objected to as immaterial, incompetent, and having been already answered.)

A. There was a certain amount allowed for that reason to enable the machines to be repaired, for the reason that we believed the machines could be repaired.

347 Q. Did the defendant claim that the machinery was worth more than it was insured for; and, if so, were you and Mr. Darlington of the same opinion at the time of the adjustment?

(Objected to as immaterial, incompetent, and as having been already answered.)

A. Defendant did think so; we decided the same.

348 Q. Is there any novelty in the supporting frames of Myers' box-trimmer, Ex. B, in your opinion?

A. I do not think there is any special novelty.

349 Q. Is it or not true that all wood-working machinery driven by power has to have some supporting frame?

A. It has to have a standard or frame to support the parts.

180 240 Q. About how long have such tables and supporting frames been in general use within your knowledge?

A. About 40 years; at least 40 years.

351 Q. Any novelty in the driving mechanism of Myers' trimmer?

A. No, sir.

352 Q. Is it not a very old and common device?

(Objected to as not arising on the rebuttal or redirect.)

A. It is.

Recross by Mr. KINGSLEY:

353 X Q. Where was the old iron at the Smith fire at the time you made the examination?

(Objected to as already answered.)

A. When we viewed it at first it was in the ruins; it was afterwards all removed to a shed a short distance away.

354 X Q. Was all the machinery and old iron put together, or were they separated in any way?

A. As they were removed from the ruins they were kept together as much as possible; after they were all removed to this shed we had men there for several days selecting and getting together the different parts of each machine as much as possible and put into such shape that we could examine and see their condition.

355 X Q. Was this old iron and machinery all in the same shed at the time you made this adjustment for the insurance company?

A. It was.

356 X Q. When you made the adjustment in the lump all the old iron and machinery remained still in the shed, did they?

A. I expect they did; at the last examination it was all there.

357 X Q. And that adjustment was made on everything saved from that fire, was it not?

A. It was.

181 358 X Q. In a lump, as you formerly stated, on the whole thing?

A. On the whole thing complete; we agreed the insurance company should pay so much damage, without picking it out.

359 X Q. Were not the twelve nailers, the printer, patented machines in perfect condition at the time of this fire—after the fire—as you remember, or nearly uninjured by it?

(Objected to as having been already answered and not a proper subject of rebuttal.)

A. The nailers and nail-feeders and the printer were more or less damaged.

360 X Q. But not much more, were they—haven't you said they were the least injured of any in the fire?

(Objected to as before, and also that the witness is entitled to have read to him what he has testified to on that point.)

A. I think now they were the least injured of any in the fire.

361 X Q. Was not the printer the least injured of all, and wasn't there more difference on that in the adjustment than any other machine, as to its valuation?

(Objected to as incompetent and already gone over.)

A. In arriving at our settlement I don't think we specified on each machine the amount of damage.

362 X Q. Do you know the valuation of the nailers, or did you at the time, and what it would cost to repair them as well as the printer?

(Objected to as incompetent, irrelevant, and immaterial.)

A. We got their selling prices, as far as possible, on all the machines at the time of the adjustment, and we formed our own opinion of the cost of repairs to make it complete; what amount I don't remember—I mean the amount on each machine.

363 X Q. Could any portion of the old iron, so called,
182 have been refitted—repaired—so as to bring a higher price than the old iron, in your opinion, and do you know whether Smith did that or not?

(Objected to as incompetent, immaterial, and irrelevant, and not in rebuttal.)

A. Taking that old iron generally—I didn't think at the time that it was worth any more than old iron—there might be some small pieces or parts that could have been selected from the pile of old iron and used in such a manner that would have made it more valuable than old iron; whether he did or not select any such pieces or parts I cannot say.

364 X Q. Can you say positively that you examined the patented machinery with such care as to actually determine whether all of it could have been repaired or not, and could you not have been mistaken as to some portions of it?

(Objected to as being already answered; also not in rebuttal.)

A. I examined it sufficiently careful at the time that I should have been willing to have made a written contract with Smith to have repaired the machine for so much money.

(Counsel moves to strike out answer, and question repeated.)

I made a careful examination of the machinery at the time, and don't think now that I was mistaken at the time in the opinion I formed of it.

365 X Q. What would you have been willing to repair those machines for that you have stated?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I couldn't state now the exact amount that I formed an opinion at that time that I could repair the machine for; I answered that question in that way, as that was the basis that I usually adjust the damage to machinery upon—what I am willing to repair it for.

366 X Q. How is it that you can state the exact condition of the several parts of this patented machinery so that you can swear as to the actual condition of the several machines and parts,
183 and that you are unable now to state what you would have repaired the same for, even though you made the basis of adjustment the actual amount for which you would make the repairs?

(Same objection.)

A. I remember the general condition of the machines at the present time, and more particularly to the fact that we spent considerable long time in making the adjustment and arriving at a settlement, and went over and examined the damaged machines several different times, but just the exact amount of money we decided it would cost to repair the machines I can't state now, but that being my general basis for adjusting, I am satisfied now that I at that time would have been willing to have taken the machines at my estimate at that time.

367 X Q. And you have no recollection, then, except your general habit of doing business, have you?

A. I have a recollection on this particular point in explanation of my former answer that I would have repaired the machines at my estimated value of damage at that time.

368 X Q. Can you give any estimate of the amount for which you would have repaired the machines?

A. I don't remember so I can state the amount.

369 X Q. Have you not said that you did not make a careful examination of such machinery sufficient to say whether any of it was so worn as to be necessary to be disused in repairing, and does that not require as careful an examination of the parts of the machinery to determine whether the machines were in a condition to be repaired or not?

(Same objection, and that the record speaks for itself.)

A. We didn't open all the boxes or bearings to the machines, and I should not consider it necessary in making an estimate of the repairs to have known what time the machine had been running, the condition it was in, and what care had been taken of it.

184 370 X Q. Is not the self-adjusting guides for the purpose of carrying boxes to the cutters, and whether the said combination of the several parts that perform that operation in the Myers box-trimmer are not entirely new, in your opinion?

(Same objection.)

A. I don't think it is new, but for that particular purpose it is new. It is an old mechanical device.

371 X Q. Is not the belt-carrier having projections at proper distances for the purpose of carrying boxes to the cutters new and novel?

A. The application of the combination may be or may not be. The belt-carrier is not new.

372 X Q. Question repeated, and witness is asked if it is not new, so far as he has any knowledge of mechanics?

A. The application to that purpose is new, so far as my knowledge goes.

373 X Q. Is not the combination for carrying the boxes and trimming them automatically new, so far as you know mechanically, at the time Myers obtained his patent?

A. The combination is new for that purpose, so far as my knowledge goes?

374 X Q. And are there not novel parts and features in the Myers nail feeding machine, as combined and operated and claimed in his patent?

A. As far as my knowledge goes, there are.

ISAAC R. JOSLIN.

(Witness signs paper with the understanding that if any alterations are to be made he can do so in the presence of counsel.)

185 MAY 18TH, 1883.

Hearing resumed.

Same appearances.

JOHN H. DARLINGTON, called for defendant, deposes and says:

Examined by Mr. CHILDS:

1 Q. What is your age, residence, and occupation?

A. Age, 54; residence, 125 Penn street, Brooklyn; occupation, engineer.

2 Q. Please state more specifically the general nature of your business.

A. I have carried on machine business for 30 years in the city of New York, and am carrying it on still; been appraiser of machinery for insurance companies and others for 15 or 20 years; my shop is corner of Centre and Franklin streets; office, 33 Pine street, New York. I carry on general machinery business of all kinds.

3 Q. Have you ever served an apprenticeship as machinist in any shop?

A. Yes; served all the way up.

4 Q. Are you familiar with wood-working machinery—its construction?

A. I am.

5 Q. To what extent has it been a part of your business to examine machinery?

A. For the last 15 years I have averaged, I guess, two or three establishments a week that had been burned or injured by fire or water.

6 Q. Do you make a specialty of appraising damages done to machinery?

A. I do.

7 Q. Are you acquainted with the parties to this suit?

A. I have met Mr. Smith at his establishment, and think I have met Mr. Myers. I don't know that I should recognize either one.

8 Q. Do you remember the occasion of a fire having taken place in defendant's box factory at Greenpoint in April, 1881?

186 A. I do.

9 Q. Did you examine any of the machinery belonging to Smith which had been in that fire; if so, at whose request and under what circumstances?

(Objected to as immaterial.)

A. I did examine it, at the request of the several insurance companies interested, to appraise the damages by fire and water.

10 Q. Was any one associated with you; if so, who?

A. Mr. Joslyn was; I saw him here this morning, and he is vice-president of Wood's Machine Company, in Liberty street.

11 Q. Was it left to you gentlemen to determine what machinery was lost and what was damaged and to fix the value on each?

(Objected to as immaterial and incompetent; the parties to this suit are not bound by any matters left to Mr. Joslyn and witness to determine.)

A. We were to arrive at the damages by the fire, and to do that we had to get at the value of what was left.

(Motion to strike out answer as improper and incompetent.)

12 Q. State the general condition of the machinery when you first saw it after the fire.

A. It was in very bad condition.

13 Q. How soon after the fire was it that you were there?

A. I don't know; shortly after; it was in the ruins, but separated so we could see what it was. I was not present when it was separated.

14 Q. Where was the machinery that was saved put when taken out of the fire?

A. Put in a building a short distance—a block, I think—from where the fire was.

15 Q. It was examined, then, by you and Mr. Joslyn?

A. It was.

187 16 Q. Can you now recall and state generally what class or kinds of machines were taken out and saved from the fire that you examined?

A. There were nailing machines, box trimming machines, blowers, some shafting and pulleys, I think a planing machine and printing press; that is about all I remember.

17 Q. Were these machines generally injured alike?

A. Some were in worse condition than others.

18 Q. All more or less injured?

A. All were injured, considerably injured, the whole of them.

19 Q. Were nail-feeders attached to the nailing machines?

A. I don't remember.

20 Q. Are you acquainted with the two kinds of machines known as Myers' box-trimmer and Myers' nail feeding machines, as shown in Ex. A and B, the plaintiff's patents?

A. I have seen them running; never built any of them; am somewhat acquainted with their machinery and construction.

21 Q. Do you remember seeing any of those machines—Myers' machines—among those saved from the fire; if so, which?

A. I do; don't know how many; there were several, but I didn't count them.

22 Q. Have you any recollection as to any machines there present beyond what is general; are you able to specify more particularly any of these machines so saved?

A. No; I don't know whether there was more than one trimmer; there was a number of nailers.

23 Q. Can you state what parts of these Myers machines were taken from the fire that you saw?

A. I can, to a certain extent.

24 Q. Please state the parts or portion of Myers' box trimming machine which had been taken from the fire, and which you saw, and their general condition.

(Objected to as immaterial.)

188 A. I saw a number of the feeders. I don't know as I can give the technical names of the parts of the trimmer. (Model shown, Defendant's Exhibit S.) I saw the spindles and the stands that held them, the cutter heads, the main driving shaft, the standards that hold it, the pulleys and cutter heads that run on it; that is about all I remember of that machine.

25 Q. Did you see the parts or portions colored dark red on this model S?

A. I did—all of them.

26 Q. What was the general condition of these parts or portions of the Myers box-trimmer that you have described at that time?

A. I don't know how to answer that; they had been through the fire, but I thought they could be used again.

27 Q. What do you mean by that?

A. They were not destroyed; their value was not gone.

28 Q. What did it require should be done to them?

A. Polishing and rebabbitting—the step might have wanted rehardening.

29 Q. Do you remember the parts or portions of the nail feeding machines that were taken from the fire? If so, state the number and their general condition.

A. I do. I can't state the number—there were several of them; there was considerable of it I thought could be used again. The only thing that is distinct in my mind is the chain arrangement; there was considerable of that. I can point out on the patent what I do remember seeing. There was a number of these chain arrangements (Fig. 1) piled up; I suppose it is the feeding apparatus, the carrier. I remember seeing parts of this machinery, but I can't state distinctly any further; it is called here in the claim the endless nail-receiver; that is the main thing in my mind.

189 30 Q. Any other?

A. No; when I speak of the endless nail-receiver I mean its bars and the pulleys that carried it—the whole was together. I thought they could be all used over again with a certain amount of repair.

31 Q. Could those nail feeding machines all be, in your judgment, repaired and refitted for use again?

A. I don't know about all. All that I saw could, but I don't know that I saw all of them. There may have been five or six. I don't remember how many were in the fire.

32 Q. You don't remember seeing but one Myers box-trimmer?

A. That is all I remember.

33 Q. And could that be repaired?

A. The parts that I saw could.

34 Q. As a machine?

A. That would be a question of degree. I should say it could be repaired.

35 Q. How long were you engaged in examining the machinery taken from the fire?

A. I think two or three days.

36 Q. Was any abatement made on the insurance on this machinery, including these Myers machines, on the ground that they could be repaired?

(Objected to as incompetent and immaterial and not binding on the parties to this action, any adjustment made.)

A. There was an abatement made for these machines and some others on the ground that there was something left. These could be repaired and the others were old iron.

Motion to strike out by Mr. Kingsley.

37 Q. Do you remember the amount?

A. It was over $3,000, but I don't remember distinctly.

(Objected to as before and motion to strike out.)

38 Q. Look at Exhibit Model S and state what are the important or essential elements of that machine.

190 A. The spindles with their cutter heads, adjustable guide bar. It is a combination patent. To make the essential

elements there would be a combination of the two spindles, one working automatically and held in contact by a spring having a guide against the side of the box to regulate the depth of the cut, with its mechanism for driving. That I should call the essential elements in the machine. When I speak of the spindles I include the standard or hangers that carry them. That is all shown here. The feed arrangement is not shown.

39 Q. State whether it has been part of your business as an appraiser and otherwise to pass upon the question as to whether machinery can be repaired or not.

A. It has; a very important part.

40 Q. Is it your judgment that these Myers machines could be repaired, founded upon the rule or custom in that respect which obtain among those dealing in machinery, buying and selling, and which is usually accepted by them?

(Objected to as no such custom appears.)

A. My experience comes in more practically from fires where we generally have two appraisers. My judgment is formed from the manner of appraising and from repairing, which I do very often myself.

41 Q. About how long, in your judgment, would the Myers box-trimmer and nail feeding machines last when used for the purpose for which they were intended?

A. Parts of them would last a lifetime; parts of them with fair usage eight or ten years. As a whole, eight or ten or twelve years, perhaps, with slight repairs.

42 Q. About how long the nail feeding machine?

A. I was calling them about the same. Some parts would give out much before others.

43 Q. Take the Myers box-trimming machine and assume that there were saved from the fire the adjustable and self-adjusting cutter heads, with their washer or gauge; the adjustable and self-
191 adjusting hangers or arms; the two steel spindles and two spindle pulleys and steps and two shaft boxes, and assume that these were all used in repairing or refitting the machine, except the steel spindles, the washer or gauge, and except that Tidey's cutter-head was substituted in place of those that were saved, and assume also that the following were put in new: six common iron pulleys with two shafts and two supports, a wooden frame or table, and two spindles, with the gauge and two side bars; was that machine, in your opinion, repaired or made new?

A. Of course, I should say it was repaired; as an appraiser that is my opinion, and I should demand salvage for it if I was appraising a loss on that ground.

44 Q. Assume in regard to nine of Myers' nail feeding machines that the following were saved from a fire: all the toothed traction pulleys and shafts, all the supporting pulleys and their shafts, and all the supports for the pulleys; about one-half of all the ratchets and pawls, and about one-third of the nail receivers or conveyers, and all the connecting rods and part of the supports for attaching

the feeder to the nailing machines, and assume that all these parts or portions were used again; were these machines, in your opinion, repaired or made new?

A. Repaired.

45 Q. Would it make any difference, in your opinion, that the box-trimmer subsequently had a chute or guard made new and attached, as to the machine being repaired?

A. Together with an endless belt there is a feeding mechanism. If it is just the chute I should say it would make no difference as to its being repaired, and with the belt I should still call it a repaired machine.

Cross-examination by Mr. KINGSLEY:

192 46 X Q. Will you state if the fire that occurred at Smith's factory in 1881 was very destructive in its character?

A. It was.

47 X Q. Did you understand that the shop contained considerable pine lumber and boxes at the time?

A. I don't remember about that.

48 X Q. Were some portions of the machinery melted by the heat?

A. They were.

49 X Q. In such a fire how would the heat affect the different kinds of machinery?

(Objected to as irrelevant and incompetent.)

And how did this fire affect them?

A. The fire was more intense in some places than others; had it been all alike the whole of them would have been destroyed. There were some heavy machines destroyed and some light ones, showing that the heat was more intense in some places than in others.

50 X Q. What heavy machinery was entirely destroyed?

A. Planing machine, a face plate with cutters. I don't know what they called it. These were heavy machines, and there were several of that kind in the south end of the building entirely destroyed, except for old iron. I saw the machines.

51 X Q. Could you say whether there were any other nail-feeders besides the Myers?

A. No.

52 X Q. Could you say whether there was any other box-trimmer but the one?

A. I think not.

53 X Q. Had these machines entirely passed out of your recollection until of late?

A. They had.

54 X Q. Who did you talk with about them?

A. Mr. Joslyn

55 X Q. What did he say to you?

(Objected to as before.)

193 A. He asked me if I remembered the machines on which I demanded salvage, which was in a building about a block from the Smith's factory.

56 X Q. What did you say?

A. I told him I did; that was all I needed to make me remember them; the machinery on which I demanded some allowance.

57 X Q. What amount of machinery in Smith's shop was left or adjudged to be old iron, as near as you can recollect?

A. On the amount of $30,000 worth there was $26,000 or $27,000 which we adjudged old iron.

58 X Q. Do you remember that it was estimated to be about 70 tons of old iron?

A. No, I do not.

59 X Q. Was all this machinery in Smith's shop its cost price and its supposed value with the loss consequent on the fire presented to you in writing on the part of Mr. Smith or his agent, Mr. Joslyn, for adjustment of losses by the insurance company; and was such paper used in adjusting of said losses between the companies and Mr. Smith?

A. There was a schedule given us of the machinery, with its value, without a price put as to its damage, which we used.

60 X Q. Do you know where that paper is?

A. No, I do not.

61 X Q. State what you know about it.

A. The usual custom is to leave it with the insurance company on file.

(Objected to.)

I have tried to find it, and have not succeeded so far.

62 X Q. Do you remember and can you state substantially what that paper embraced?

A. The machinery, tools, and fixtures, and gave his valuation of them before the fire. The loss we were to put down.

63 X Q. Do you remember how much he represented the machinery was worth?

A. I don't remember.

64 X Q. Was it over $40,000?

194 A. I hardly think so.

(Paper shown.)

65 X Q. See if those items refresh your recollection.

A. There is nothing there to remind me.

56 X Q. Do not the insurance companies keep their schedules of losses?

A. I think they do—on file. There is one thing I don't remember about this one, whether it was carried out in detail; that there was a schedule, with the price put down, I know. It is possible I may have that paper myself; it is not my custom to keep it.

67 X Q. Do you remember what the compromise was?

A. No; only it was in general about $28,000 we were to pay; there was somewhere about $3,000 salvage.

68 X Q. What do you mean by salvage?

A. Salvage is anything left after the whole loss is paid from the amount of insurance; if there is $40,000 insurance and the loss is $38,000 the $2,000 left we call salvage; it goes to the insurance Co.; they have so much less to pay.

69 X Q. You allowed Mr. Smith, then, about $28,000 for loss?

A. Somewhere in that neighborhood.

70 X Q. And all the old iron?

A. It belonged to him; all the machinery.

71 X Q. And the machinery was part of the compromise?

A. Exactly. Mr. Joslyn and I couldn't quite agree on the loss; that necessitated a compromise; I think the deduction was about $3,000.

(Paper shown.)

It was $3,340 on the machinery item alone.

72 X Q. The valuation of the old iron came out of that amount, whatever that was worth; then he could not have lost $3,000?

A. Yes; by less what the old iron brought.

73 X Q. What was the old iron worth?

195 A. I can't remember; I think old iron was worth then about $15 a ton on the ground.

74 X Q. Then, if there was as much as seventy tons of old iron, that should be deducted from the $3,000 to get the exact loss by Mr. Smith?

A. Yes; it would be $1,050.

75 X Q. And the balance of that loss or salvage—on what machinery was that to be adjusted, if you can tell?

A. On this machinery in the shed—the whole of it.

76 X Q. What was in the shed?

A. I have stated as near as I could.

(Objected to as already answered.)

A. There was a blower, some shafting, pulleys, and hangers, these nailing machines—there was quite a pile of them, but I don't remember the number; I don't remember but one dressing machine; there was other machinery, but I can't get at it now.

77 X Q. What proportion of that machinery was the Myers machinery to the other in the shed?

A. I can't tell; I don't remember the other machines; the Myers machines took a very large bulk of the room.

78 X Q. How did you know it was Myers' machinery?

A. They claimed it, and I recognized it from having seen it in the other factories.

79 X Q. Can you tell any portions of the machinery saved that constituted the other machines than the Myers that were in the shed?

A. I can, some things.

80 X Q. State what.

A. There was a blower there—I think two of them; I claimed certain portions of them could be repaired; there was shafting,

pulleys, a number of braces and hangers; there was another machine, but I can't tell what it was; I think it was a planer; that is about all I remember.

81 X Q. Do you remember that there were nailing machines?

196 A. I think there were; cannot state the number.

82 X Q. Can you state the condition of the several parts of the machines you do recollect?

A. Yes; only generally.

83 X Q. Do you remember one class of machines as distinctly as others?

A. One thing makes me remember the Myers machinery a little better than others—it was the larger price charged for them, and that led to that question of the patent; they were not the only machines that I claimed salvage on.

84 X Q. Can you state any further as to what was in that shed?

A. No; unless I can find that schedule and it has them on it.

85 X Q. Did you know the price of the Myers machines?

A. Only from what they put down; I thought it was a very high price.

86 X Q. Suppose Mr. Myers' machinery cost Smith $1,200, what proportion should be charged to Mr. Smith as salvage allowed in the adjustment—as near as you can tell?

A. I should want to know what he paid for the royalty to answer that.

87 X Q. Assuming the old iron was worth $1,000, didn't Mr. Smith receive $29,000 with his insurance?

A. Yes; about.

88 X Q. That would leave his loss $2,340?

A. Yes; about.

89 X Q. Then, if Myers machinery cost $1,200, what would be the salvage to be allowed on that basis?

A. I couldn't answer that question.

90 X Q. Suppose Mr. Myers' machinery cost $1,200, what proportion would that bear to $31,340, the amount he was insured for, and what salvage should be allowed on the Myers machinery on that basis?

(Objected to as incompetent and immaterial.)

197 A. The difficulty is I could not separate what is allowed on the Myers machinery from the other; I could not proportion the loss on the Myers machinery; I compute the proportion of $1,200 to $31,340 at about 2½ per cent.

91 X Q. Do you remember how much of the machinery in that shed was said to have been patented?

A. It was not all patented, but the greater part of what we allowed was on the nailers and dressers. The salvage was on all the machinery in the shed and the iron; it was not all brought to the shed.

92 X Q. Could all the machinery in the shed have been repaired?

A. Not all; they saved some things that I didn't consider could be repaired.

93 X Q. Could you say positively from your recollection of the several parts of the nail-feeders and nailers that they could be repaired or not?

A. I can only answer that these things could be used in repairing the machines; those parts that I remember.

94 X Q. Could you say positively that they could all be used?

A. No; I could not.

95 X Q. Your recollection of the details does not enable you to say?

A. No.

96 X Q. Would that be your answer as to the Myers box-trimmer?

A. I would answer the same way, that there were parts that could be used.

97 X Q. You didn't see all the parts?

A. I don't remember that I did.

98 X Q. Can you say that all the parts you did see could be used?

A. I say they could not all be used in repairing. I remember the springs, guide board, wooden table; I saw that was gone; without seeing it I could see that couldn't be used; that is about all I remember.

(Pl'ff's model C shown.)

198 99 X Q. Do you recollect seeing all the parts that constitute this model?

A. No.

100 X Q. State what parts you think you didn't see at the shed after the fire.

A. The endless belt, the wooden table, the driving belts—all the wooden parts and the belts.

101 X Q. What parts did you see that couldn't be used in repairing?

A. The springs, the pressure bars, the guides, and some of the pulleys; can't say how many—that is all I can say. I don't know they could be used?

102 X Q. Why couldn't they be used?

A. The temper was out of the springs; the guides were broken; the belts and wooden parts were burned up.

103 X Q. Could the hanger have been used?

A. I think it could; not without repair.

104 X Q. What repairs did it need?

A. New babbitting.

105 X Q. Could the parts, as you saw them, have been put together simply by repairs, without supplying many new parts in the machines, so it would work and trim boxes as before it was injured?

A. It would have a number of new parts.

106 X Q. Look at these exhibits with tags and state what parts you saw.

A. I saw them all.

107 X Q. Do those comprise all you did see of the box-trimmer?

A. Not all; there were spindles and cutter heads, *two*, and two shafts and some pulleys.

108 X Q. Which ones were so badly damaged that they could not be used?

A. I should not have used the pulleys; that is about all I should not have used, of what I have named, if I was going to repair it; all these pieces from 1 to 6 could have been used.

109 X Q. What else could have been used besides those six, in your opinion?

A. I have just answered that.

199 109½ X Q. Would you have used the cutter head?

A. I think I should; they were somewhat worn.

110 X Q. Were they not warped or twisted?

A. Not worse than I have seen repaired, as I remember.

111 X Q. Your recollection is not positive or distinct about it as to its condition, is it?

A. No, sir; not very.

112 X Q. Then you couldn't say positively, from your recollection, whether it was in a condition to be used again or not?

A. My best recollection is that it could, but I am not positive.

113 X Q. Look at plaintiff's letters patent 201,822, Ex. B, and look at the eighth claim in the patent and state what pieces from 1 to 6 representing the Myers box-trimmer you find in that claim, if any.

A. I find a self-adjusting cutter, an adjustable cutter, and driving mechanism; that is all in that claim.

114 X Q. What driving mechanism is comprised in any of these pieces, from 1 to 6?

A. I find the two pulleys that go on the spindles; two boxes that hold the shaft.

115 X Q. Is that all the driving mechanism in that machinery?

A. No, sir.

116 X Q. What else comprises the driving mechanism?

A. Shafts and pulleys, two or three shafts; three shafts and six pulleys and the belts that drive them.

117 X Q. State what parts of the eighth claim in the Myers patent are embraced which you do not find in Plaintiff's Ex's from 1 to 6.

A. Supporting frame or table, chute and guards and carrier; I find the adjustable stand; I do not find an adjustable bar mentioned in the eighth claim.

118 X Q. Does not the eighth claim include a self-adjusting cutter?

200 A. It does; I find an adjustable cutter, which is only adjustable by being on the spindle which is in the adjustable hanger, and the cutter itself is not in the pieces from 1 to 6.

119 X Q. Do you find in the eighth claim of that patent the term hanger?

A. I do not.

120 X Q. Does the eighth claim embrace hanger?

A. In my opinion it does.

121 X Q. In what way is it connected with the eighth claim?

A. It is adjustable and carries the cutters.

122 X Q. In a patented machine like this of Myers embracing the eighth claim are not all the parts constituting that combination equally essential to the invention, as you understand it?

A. Not equally essential; they are all essential, but not equally essential.

123 X Q. All would have to be embraced in order to constitute the invention in making the Myers machines?

(Objected to, first, as leading; second, assumes facts not proven.)

A. It would.

124 X Q. Assume that in refitting the Myers box-trimmer after the fire there was used a couple of the shaft supports or boxes and every other part was supplied with new parts and assembled, would you call that repairing or rebuilding the Myers machine, as sold to defendant Smith?

(Objected to as incompetent and speculative.)

A. I should call it building a new machine and putting some repaired parts to it.

125 X Q. Assume that the two shaft supports or boxes as well as the self-adjusting and adjustable cutters, both of which had to be made adjusting and self-adjusting by supplying new parts to them in order that they should work, and all the other parts were made new and no part was mended or patched on the Myers box-trimmer and they were assembled, would that machine purchased by Smith from Myers after these repairs be the identical machine so sold or not?

201

(Objected to as incompetent, irrelevant, and immaterial.)

A. I don't know how to answer that question; it is speculative; it would only be a part of the machine; it is a small part in the bulk, but quite an essential part, however.

126 X Q. Assuming the preceding question, would you call the machine so refitted a repaired machine or not?

(Same objection, and also as being speculative, not founded on facts proven in the case.)

A. I couldn't call it a new machine. I don't know how you would put it. I don't claim to be an expert on such a point as that.

127 X Q. Couldn't the pieces from one to six, representing the box-trimmer after the fire, together with what you say you saw, comprise all the essential parts of the box-trimmer?

A. Not all.

128 X Q. Look at claim 1st in Ex. B. What do you find comprised under that claim?

(Objected to; patent speaks for itself.)

A. Self-adjusting cutter having a gauge to bear against the work.

129 X Q. Do you find in the pieces from one to six the parts that constitute that claim?

A. I find the self-adjusting hangers which carry the cutters and

which I consider meant by the self-adjusting cutter I find in this first claim; the self-adjusting gauge I do not find in pieces one to six.

130 X Q. Do you find a self-adjusting cutter in pieces 1 to 6, so denominated in the patent, having a gauge to bear against the work?

A. I find part of it and part of it I don't find. I don't find the gauge to bear against the work.

131 X Q. And supposing that that gauge was made new
202 under that claim, would not that be making one-half of Myers' invention under that claim?

A. It would be one part of this claim.

132 X Q. How many mechanical parts under that first claim?

A. There is a cutter and an adjusting cutter and a gauge. An adjusting cutter and gauge comprise the first claim in Myers' patent, and I regard both parts as essential to that claim.

133 X Q. In constructing the machine, if one of these parts were left out it would be a different machine than if it comprised both, wouldn't it?

A. It would.

134 X Q. Is not that true of all the claims?

A. That is true of all the claims I have read, and I have read them all.

135 X Q. What is making a machine?

A. Taking material and manipulating it and putting it together.

136 X Q. When do you call a machine new or old?

A. I call a machine new when it is first built of new material. I would call the same machine old, whether it had been used or not, when it had been built ten years. I would call it old if it were a machine that wore out very fast, like some machines, if it had been used six months; it might not be old in age.

137 X Q. What is a reconstructed machine?

A. I should call a reconstructed machine if I should take a machine to pieces and alter it in some essential features in putting it together again.

138 X Q. What do you call a repaired machine, and in what does it differ from a reconstructed machine, and where do you draw the line of distinction?

A. I should call a repaired machine one in which I may have added some new parts, refitted old parts without any great change from the original plan. The only difference I would make would be in some changes of plan, and that is more in the
203 technical understanding of it than it is in the reality.

Adjourned to May 25th, 1883, at 2 p. m.

MAY 25TH, 1883.

Hearing resumed.

Same appearances.

Cross-examination of JOHN H. DARLINGTON resumed by Mr. KINGSLEY:

139 X Q. Do you now, on reflection, make any difference between the repairing and reconstructing a machine?

A. I think my former answer is as near as I could get at it.

140 X Q. Assume that the Myers box-trimmer was so injured by the fire that it was necessary to supply it with one-half of the essential parts, as claimed in the letters patent, and the same were not mended or patched in any part, and the parts injured or destroyed were supplied by entire new parts, would you call that the identical machine that existed before the fire?

(Objected to as incompetent and immaterial and entirely speculative.)

A. I should call it the same machine with new parts added. I should call it repaired or reconstructed.

141 X Q. Add to question 140 "and the said parts were assembled together," would that make any difference?

A. I supposed that you so meant it.

142 X Q. Assume that a second fire should occur in Smith's shop and this same trimmer should be injured thereby, and all the old parts remaining were injured or destroyed, the same were not mended or patched, but the machine was made or put into working order by supplying old parts with entire new parts, would
204 that still remain, in your opinion, the identical machine sold by Myers to Smith or would you call it a repaired machine?

(Objected to as before.)

A. I should call it the same machine.

143 X Q. And the identical machine that Myers sold Smith?

A. I should call it the same machine, though every part had been changed and made new in the way you put it there—not all at one time.

144 X Q. Has not the machine so sold by Myers to Smith been made on the two different occasions entirely new or supplied with new parts, and would there be any difference if all the parts had been supplied at once instead of on two different occasions?

A. To the first I should answer, yes; to the second I should answer, there would.

145 X Q. What is the reason for the difference?

A. Because the parts had been used together or assembled together before being destroyed or injured or changed, which being assembled made them one machine.

146 X Q. On the last occasion the new parts supplied were not assembled with any of the old parts of the original machine, but with the new parts of what you call the repaired machine, and how can you, then, say that it is the identical machine after the second occasion which Myers sold Smith?

A. By being assembled together made them part and parcel of one another.

147 X Q. There were no old parts on the 2d occasion, they having been destroyed; was it not, then, an assembling of new parts constituting the entire machine?

(Same objection.)

A. The assembling of the new parts with the old parts made them a part of that machine, and they being part of the old machine, then, and assembled with new parts again, made these new parts a part of that machine.

205 148 X Q. By the preceding question and the assumption there made in reference to repairing of machines, has not the Myers machine been rebuilt or constructed on the first occasion with one half of new parts and on the second occasion with the other half new parts?

(Same objection.)

A. They are all new parts from the original machine.

149 X Q. What do you mean—that they were separate and distinct from the original machine?

A. From the first machine sold by Myers to Smith.

189 X Q. Do you mean that these are parts of the same machine sold by Myers to Smith, or a separate and distinct one from that machine?

(Same objection.)

A. I say they are all new parts—that is all I can say.

151 X Q. Assume that all the parts of the original machine were more or less injured by wear and the fire upon the first and second occasion in which they were repaired, as assumed in the previous questions, and those parts were taken by Smith to Smith & Doig, and they were refitted and assembled again, would not that be the original machine sold by Myers to Smith, in your opinion?

(Same objection.)

A. It would.

152 X Q. No parts being lost or made new?

A. It would be the original machine.

153 X Q. Assume that one-third of the original machine, of the essential parts, was destroyed and made new, would not that be making the original machine to that extent entirely new, where no parts were mended or patched in the repairing?

A. It would be making those new parts; for those parts it would be new.

154 X Q. What parts of the box-trimmer of Mr. Myers would be necessary to embrace in a repaired machine, in repairing, to
206 preserve it as the identical machine so sold by Myers to Smith, in your opinion?

A. There is no particular part, provided they had been assembled and used.

155 X Q. Assume, then, that after this fire in Smith's shop that one-half of the essential parts in Myers' invention are utterly destroyed in this fire and the other half preserved and used in rebuilding another machine, would you call that repairing the original machine?

A. I would call it the same machine repaired.

156 X Q. Assume that on this occasion of the fire that one-half of

the essential parts were left out and sold as old iron, and it was found by the purchaser that with a little refitting these parts so disused and sold could be replaced in another machine, would that not be the original machine repaired, just as much as the one rebuilt by Smith from the uninjured parts of the original machine by the supplying necessary new parts?

(Same objection.)

A. There cannot be two original machines. I consider that the one that had uninjured parts and new ones added I should call the original machine, because it belonged to Smith.

157 Q. I now assume that Smith keeps this half of the injured parts and refits them himself without mending or patching any of them and supplies the other half entirely new; is that not the original machine sold by Myers to Smith just as much as the machine that he rebuilt from the uninjured parts with other new parts added thereto?

A. If he only built one machine I should say it was.

158 X Q. Why had he a right to build a machine from the uninjured parts any more than he had a right to construct or build another from the injured parts, as assumed in the previous question?

(Same objection.)

207 A. I don't understand that I have said so; I say that he has a right to build from either if he makes but one.

159 X Q. Look at claim 8, in Myers' patent No. 21822, Ex. B, and look at the several pieces, Ex. Tags 1 to 6, and state what pieces you find.

A. Two shaft boxes, two spindle pulleys, and stands or hangers.

160 X Q. Which of those pieces, from 1 to 6, if any, do you find embraced in name in this 8th claim of the patent?

A. I find part of the driving mechanism, the pulleys that drive the spindles, the bearings that hold the shafts or spindles, the bearings that hold the adjustable spindles that carry the cutters; I only find named part of the driving mechanism, and I can't separate the adjustable cutter from the parts it runs in—the hanger that carries it is here.

161 X Q. Is the hanger the adjustable cutter?

A. It carries it.

162 X Q. Is the hanger named in the 8th claim?

A. The adjustable cutter is named, and I consider this part of it; the bearings, too, are part of the driving mechanism; the pulleys, too, are part of the driving mechanism.

163 X Q. Assume that these pieces with a bed plate to the hanger were used in repairing the Myers box-trimmer by the defendant, would you call that machine after these parts were used as you have explained the same machine that Myers sold Smith?

(Same objection.)

A. A part of it—part of the same machine.

164 X Q. What part?

A. The adjustable hanger and the bed plate.

165 X Q. And the rest?

A. If they used nothing else coming out of the machine I should say they were new parts.

166 X Q. Look at the first claim of the patent and see if these parts from 1 to 6 are comprised in that claim or covered by that claim mechanically.

(Same objection.)

208 A. I find nothing but the stand that carries the cutters; I can't separate them; I do not find any guide or gauge.

167 X Q. Assume, then, that those parts were destroyed, and only the one you find here was used in repairing by the defendants, would not that be making Myers' invention by supplying those parts under that claim, mechanically speaking?

(Same objection.)

A. It would be adding a gauge which is not shown here.

168 X Q. And is not the gauge necessary to the first claim of the patent?

A. It is necessary to the combination in that claim.

169 X Q. Was it not represented to you at the time of the adjustment that the carriers attached to this trimmer connecting it with the nailer were lengthy, and did they not have long chains for the purpose of carrying the boxes to and from the trimmer, as you were advised?

A. I don't remember about that.

170 X Q. Do you not remember that something was said about the length of carriers and their expense in reference to the salvage?

A. No, I do not.

171 X Q. Have you found the schedule spoken of?

A. I have looked for it and do not find it; found a good many, but not that.

172 X Q. Do you remember if you had one as well as Mr. Joslyn?

A. I think he had one; it is not in my possession now; I am sure of that.

173 X Q. Your recollection as to the nine feeding machines and the condition of their parts, as well as the nailers, is not very distinct?

A. Not very.

174 X Q. Could you tell, from recollection of over two years, how far the feeders and the nailer were injured?

A. No, I could not.

209 175 X Q. Assume that the Myers nail-feeders were so injured by that fire that the bed plates or main frames, two-thirds of the receivers or conveyers, four boxes, seven pairs of legs or supports for attaching the feeder to the nailing machine, four of the nailing receptacles, all the conduits, and many of the rivets were destroyed and made entirely new in the refitting of said feeders,

would that, in your opinion, be repairing the machine or reconstructing it? Add that none of the parts were mended or patched?

(Same objections, and also as mentioning parts not claimed in patent, Ex. A.)

A. I should say it was repairing it.

176 X Q. Look at the first claim in the patent, Ex. A, and state whether the parts destroyed as above are embraced in that claim, in your judgment.

(Same objection.)

A. Some of the conveyers; some of the sockets or bars provided with holes; that is all that I see that you mentioned.

177 X Q. Suppose two-thirds of this entire endless chain, the conveyers, and cross-bars was entirely destroyed by this fire and one-third used in repairing or refitting the machine, would you call that rebuilding the endless chain or simply repairing it, the bed plate and cross-bars being destroyed?

A. The conveyers and cross-bars; I should call it repairing.

178 X Q. Would you call that endless conveyer the same thing after the bed plates, the transverse bars, many of the rivets, and two-thirds of the sockets had been made new the same endless chain as before it was injured—same identical chain?

A. I should call it the same repaired.

179 X Q. Assume that two-thirds of the endless chain had been destroyed and broken up and made entirely new to that extent, would it not be, two-thirds of it, a new chain?

A. It would.

210 180 X Q. And if by a second fire the other one-third had become utterly destroyed and supplied by new parts would it not then be rebuilt of entire new parts?

A. I should answer that just as I did the other question as to the trimming machine; it would be new parts till it was joined with the old in the first instance; then it would become part of the old chain.

181 X Q. What would you call the making of this chain, in the first place?

A. Making an endless conveyer or chain.

182 X Q. What does the making of this machine mean; what do you regard as the making a feeder of Mr. Myers?

A. I should go back to the claim.

183 X Q. What is the making of a machine mechanically?

(Objected to as already answered, and incompetent.)

A. Making the parts and assembling them together.

184 X Q. If two-thirds of a Myers feeder and endless chain were made new, embracing bed plate, receivers, and conveyers and cross-bars and rivets, would not that, to that extent, be making separate parts and assembling them together?

A. If it was put with other parts to make it a whole it would.

185 X Q. Assume that in refitting the Myers box-trimmer there

was used a couple of shaft supports or boxes and that every other part was supplied new, would that be repairing a Myers box-trimmer?

A. I should call that making a new machine and adding some old parts.

186 X Q. How many old parts may be added in the Myers trimmer or nail-feeder to thus make a new machine in repairing?

211 A. There might be a number of the non-essential parts, and still call it a new machine with old parts added.

187 X Q. What do you call the essential parts of the Myers nail-feeder under his patent as embraced in Ex. A?

A. The endless conveyer and the nail-driving mechanism with the pulleys and the feeder; I don't see that under that name. I should say in combination with the feeder or receptacle.

188 X Q. Do you find that Complainant's Ex. Feeder is built in accordance with the patent?

A. I should think it was.

Redirect by Mr. CHILDS:

189 Re-D. Q. You say, after expiration of two years, your memory is not very distinct as to the parts or portions of the machines that were saved from the fire. Did you or not critically examine these machines in controversy after the fire and decide that, in your opinion, these machines could then be repaired?

(Objected to as immaterial and incompetent.)

A. I did.

190 Re-D. Q. You say you cannot specify the exact amount that was allowed on each of these machines at that time on the ground that they could be repaired. Was a certain sum of some amount which, in the opinion of yourself and Mr. Joslyn, was proper for that purpose allowed to the defendant for the purpose of repairing the machines in suit?

(Objected to as immaterial and incompetent and not binding on complainant in this action.)

A. There was a certain amount allowed to the insurance company for what was left of these nailing and trimming machines; it was for repairing the machines.

(Motion to strike out answer.)

212 191 Re-D. Q. You are positive, then, that they were not reckoned as a total loss?

A. I am positive.

192 Re-D. Q. Did not Mr. Smith claim that the value of the machines on hand at the time of the fire was greater than the amount of the insurance?

(Objected to as before.)

A. He did.

193 Re-D. Q. How much greater?

A. Several thousand dollars; I don't remember the amount; I know it was considerably more, but I can't state the amount.

194 Re-D. Q. Did you and Mr. Joslyn consider that the machinery was worth in the aggregate more than the face of the policies?

A. I suppose we did; I don't know now.

195 Re-D. Q. If Mr. Smith's insurance was for less than the actual value of his machinery was not his loss in fact greater than the amount he received?

A. We gave him this old machinery and the machinery that could be repaired, together with the old iron; we gave him these and $28,000, which we thought covered his loss on the machinery up to the amount of his policies—$31,340.

196 Re-D. Q. If his machinery was actually worth more—several thousand dollars more—than the amount he was insured for, then he also lost that in addition?

A. Certainly.

197 Re-D. Q. Is it not a necessity of any wood-working machine that it should have a supporting frame?

A. That is a pretty broad question. All wood-working machinery driven by power has to have some supporting frame.

198 Re-D. Q. Is there any novelty in the supporting frame of Myers' box-trimmer, Ex. B?

A. No.

199 Re-D. Q. Has not such a table been used in wood-
213 cutting machines when the work is to be fed forward to the operating tools from time immemorial?

A. Similar tables have been used to my knowledge thirty-five years.

200 Re-D. Q. Is there any novelty in the driving mechanism of Myers' trimmer?

A. There is nothing new but what I have seen.

201 Re-D. Q. Is it not essentially such as has been used from time immemorial in a large variety of machines, and such as any mechanic might select for any machine?

A. It is a very old and common device.

202 Re-D. Q. Is or not the same true as to the driving mechanism of the nail-feeders?

(Objected to as not called out in rebuttal, and incompetent and improper.)

A. There is one feature in that that is not very common, the toothed wheels; all the rest is common enough.

(Motion to strike out answer.)

Recross by Mr. KINGSLEY:

203 X Q. Is it not true that nearly all machinery and their parts have been used in some form, more or less, for a long time?

A. It is true.

204 X Q. Is it not also true that most invention nowadays consists in making some new device and arranging old parts into some new form?

A. New combinations.

205 X Q. And in the patents you have examined here, do they not embrace combinations?

(Objected to, as the patent speaks for itself.)

A. Yes.

JOHN H. DARLINGTON.

Adjourned to Friday, June 1st, 1883, at 2 p. m.

214 MARCH 26TH, 1883.

Hearing resumed.

Same appearances.

THOMAS L. SMITH, being sworn as a witness on behalf of defendant, deposes and says:

Examined by Mr. CHILDS:

1 Q. What is your age, residence, and occupation?

A. My age is 45; occupation, machinist; residence, 108 South 5th street, Williamsburg.

2 Q. Are you a practical machinist; and, if so, how long have you been such?

A. I am; and have been about 25 years.

3 Q. Where do you transact your business and with whom—under what style?

A. At 24 Franklin street, Greenpoint, with Wm. S. Doig, under the firm name of Smith & Doig; the firm has been doing business about three years.

4 Q. What is the general character of your business?

A. General machine work and repairing.

5 Q. Do you know the defendant?

A. I do; have known him some three or four years.

6 Q. Were you employed by the defendant at any time to fix any machines for him which had been injured by the fire in his factory at Greenpoint; and, if so, when and what machines were they?

A. I was employed by him to repair nine nail feeding machines and one box-trimmer; the work was commenced on May 15th, 1881, I believe, on the nail-feeders, and completed, I think, September 8th; the trimmer was some time later; was commenced in May, 1882, and finished May 29th.

7 Q. When did Mr. Smith first speak to you in reference to repairing these machines?

A. Immediately after the fire.

8 Q. Were you there at the time of the fire?

A. I was not.

215 9 Q. Afterwards?

A. Two or three days afterwards.

10 Q. How long after the fire was it that Mr. Smith spoke to you in reference to making repairs?

A. It was on the day I visited the ruins with him.

11 Q. What did he say to you in that regard?

A. He asked me if I thought the machines could be repaired.

12 Q. What answer did you make to him?

A. I told him that they could be.

13 Q. Did you examine the ruins of the fire; and, if so, make any special examination of any of these machines in question or their condition at that time?

A. I just made a rough examination; was on the premises probably an hour looking them over.

14 Q. State whether Mr. Smith sent these machines to your shop subsequently for repairs and whether you did so repair them.

A. He did, and I repaired them—our firm did.

15 Q. State what portions or part of the box-trimming machines were saved from that fire and sent to you to be repaired; state the condition of that machine when it was sent to you for that purpose in detail.

A. There was sent to me the adjustable hanger or arm and the self-adjusting hanger or arm, the two steel spindle steps, two iron spindle pulleys, an adjustable cutter head, and a self-adjustable cutter head, with a washer or gauge; there were two shaft supports or boxes and two steel spindles. I believe that is all. With the exception of the steel spindles and the gauge for bearing against the work, the rest was in good condition.

16 Q. State what portion, or if all you used in refitting this machine, of the parts or portion you have enumerated as saved from the fire.

(Objected to as leading, and that witness has not said that any parts were used; withdrawn.)

216 16½ Q. State what parts you used in repairing the machine.

A. The adjustable hanger, the self-adjustable hanger, the two steel steps, two spindle pulleys, two shaft boxes. I think that is all.

17 Q. Was the self-adjusting cutter head used?

(Objected to as leading and improper.)

A. Neither of the cutter heads were used in repairing.

18 Q. State what new parts you put in the machine.

A. I put in a new table or frame of wood, six ordinary iron pulleys, two wrought-iron shafts and supports, two steel spindles and one gauge, two adjustable guides of iron or side bars.

19 Q. Did you make new any self-adjusting cutter having a gauge to bear against the work or any other cutter?

(Objected to as leading.)

A. I did not.

20 Q. Or any carrier?

(Objected to.)

A. I did not.

21 Q. Or any table having a chute or guards?

A. I did not.

22 Q. While repairing this machine did you send to complainant to get any parts or portions, and did he have knowledge of the uses for which you bought them?

A. Not on the box-trimmer.

23 Q. As to the nail-feeders?

A. I sent to the plaintiff for some steel springs to be used on the feeders. He sold them to me, what he had on hand, and directed me where I could buy the steel. I suppose he must have known what they were for when he sent them to me all cut into shape.

24 Q. State whether they were cut out in shape ready for use in these machines.

217 A. They were roughly cut out into shape. We had a little fitting to do to adjust them to their place.

25 Q. State what parts of the nail-feeders you received from the defendant which were saved from the fire.

A. I received about one-third of the nail receptacles or conveyers, as they are called, all of the toothed traction wheels and their shafts, all the supporting pulleys and their supports and shafts, all of the connecting rods, about one-half of the ratchets and pawls; there were two pairs of the supporting brackets for attaching the feeders to the nailing machine; there were a couple of boxes for holding nails; I believe that is all.

26 Q. State what portion or parts of these you used in repairing the machine.

A. All the parts saved were used again.

26½ Q. Did you save and use the bed plate or platform?

(Objected to as leading.)

A. I did not.

27 Q. Did you make new any toothed traction pulleys?

(Objected to.)

A. I did not.

28 Q. Are Respondent's Exhibits Nos. 1 and 2 the bills you rendered to the defendant for repairing these machines?

A. I should have to see them.

(Counsel for complainant objects to the exhibits being shown the witness, as he has testified from memory. Witness examines exhibits and further replies: They are.)

29 Q. And were you paid the sums therein specified for doing that work?

A. I was.

30 Q. Is there any portion of these bills as to labor or material which did not go into these machines as repaired by your firm?

(Objected to as leading.)

A. There is.

218 31 Q. State what and how much and how it came about.

A. There is in the bill of castings; the castings were all made when it was decided upon by Mr. Smith to make some alterations; those castings were thrown away. I can't tell the exact weight of them. It is considerable.

32 Q. What was the change or alteration you speak of?

A. The supports for attaching the feeders to the nailing machines were made higher. Mr. Smith wished to have ratchets and pawls put on both sides of the machine, but finally abandoned the idea, and those castings were thrown away and all charged to him.

33 Q. Do you know about how long would one of these box-trimmers last when used in a box factory like defendant's in the usual way?

(Objected to, as it does not appear witness is competent to give an opinion, and as leading.)

A. Of course, there would have to be necessary repairs once in awhile; I should say it would last 20 years.

(Complainant's counsel moves to strike out answer. Witness further answers: I do not know.)

34 Q. Are you able to state as a machinist and from your knowledge of the machine called the box-trimmer and the uses to which it is put about how long such a machine would ordinarily last with fair usage?

(Objected to, as witness has already answered and that he is not competent to give an opinion.)

A. I am. With now and then some slight repairs it would probably last 18 or 20 years.

35 Q. In reference to the nail-feeders are you able to state? And, if so, please do so.

A. My answer to that would be about the same as the other.

219 36 Q. Were these machines repaired in your shop—34 Franklin St.?

A. They were.

37 Q. Was the work done on them publicly and openly or in a private room or secret manner?

A. Anybody who wished could enter my shop during business hours and see all being done there.

38 Q. Was that true of the trimmers and nail-feeders during all the time they were being repaired?

A. It was.

39 Q. Testimony has been given here to the general effect that you refused to repair these machines unless defendant would indemnify you. What about that?

A. When the nail-feeders were delivered to me to be repaired I said to Mr. Smith, "I believe Mr. Myers has a patent on those machines." He said, "I know it, but I have a right to have them repaired and put in working order, and I will be responsible if anything may turn up," or words to that effect. I did not question his state-

ment, but took it for granted that he had the right, and went on and did the work. When we had the box-trimmer about complete Mr. Lightowler visited my shop and saw the machine. He was accompanied by Mr. Leech. Mr. Lightowler made a proposal to me that if I would assist him to make out a case against E. C. Smith he would guarantee not to prosecute Smith & Doig for doing this work. I then went to Mr. Smith and informed him of what Mr. Lightowler had said. Mr. Smith told me that all I could do in the matter, if I should be called into court to testify, was to tell the exact facts in the case. He said that he had the right to have that machine repaired and would be responsible for any trouble that we might get into about it. The machine was then delivered to him and the bill rendered and paid.

40 Q. Before commencing work on these machines did you or not express your opinion to him that they could be repaired?

220 (Objected to as already asked and immaterial.)

A. I did.

41 Q. After the machines were finished did you express the same opinion?

(Objected to as immaterial and incompetent.)

42 Q. I mean after the machines were finished was it your opinion, as expressed to Mr. Smith, that they had been repaired and not rebuilt?

(Objected to as immaterial and leading.)

A. It was.

43 Q. What is your opinion and belief now as to whether those machines or any of them were repaired, refitted for use, built, or reconstructed?

A. I believe them to have been repaired.

44 Q. Did the defendant, in speaking to you on the subject of repairs, state that he had been advised by machinists, experts, or other persons as to his right to repair the machines?

(Objected to as immaterial and leading.)

A. He did.

45 Q. What did he say?

(Objected to as incompetent, leading, and immaterial.)

A. He told me that Mr. Reese, of the firm of Reese & Church, box-makers, who had been in the same predicament, had a lot of patented machines and had them repaired, and that he had a perfect right to have them rebuilt or put in working order again. I can't remember the words used.

(Counsel for complainant moves to strike out the answer.)
(Defendant's counsel consents.)

46 Q. Do you know whether other mechanics expressed the opinion that these machines could be repaired?

A. I do.

47 Q. Was that a fact?

(Objected to as incompetent, leading, and immaterial.)

221 A. Yes.

Adjourned to March 30th, 11 a. m.

APRIL 3D, 1883.

Hearing resumed.
Same appearances.

Examination of T. L. SMITH resumed by Mr. CHILDS:

48 Q. State the general condition of the several machines after the fire when they were received by you to be repaired. Were the parts hanging together or disjointed and severed?

A. The nail-feeders were burned—some of the parts bent and destroyed—but all hanging together as a machine. The box-trimmer—the parts were separated on account of the wooden table or frame having been burned away entirely.

49 Q. In the trimmer were the parts mostly or not attached to this table or frame?

A. Yes; the working parts were attached to the table or frame.

50 Q. And what reason do you give for their being so detached?

A. From the table or frame having been destroyed by fire.

51 Q. You have stated in answer to Q. 17 that neither of the cutter heads were used in repairing the box-trimmers, and you stated in answer to Q. 15 that you received them, and that they were saved from the fire. Why were they not used in repairing the machines?

A. Mr. Smith wished to substitute another cutter head manufactured by Mr. Tidey; the others could have been used if he had wanted to.

52 Q. Where are those cutter heads now?

A. They are now at my shop, at Greenpoint.

53 Q. You have stated that you put in two new steel spindles in the box-trimmer. Were not the old ones saved from the fire; and, if so, why were they not used?

(Objected to.)

222 A. They were saved from the fire; they could have been used, but I thought it was cheaper for Mr. Smith to make new ones.

54 Q. How much were they injured?

A. They were bent and somewhat worn.

(Objected to as immaterial.)

55 Q. What other portions of the box-trimmer were worn in any respect so that you substituted new parts in their place on that ground?

(Objected to as leading, incompetent, and immaterial.)

A. The gauge for bearing against the work.

56 Q. As to the nail-feeders; how was it?

A. There was nothing there worn so bad that I had to throw it away.

57 Q. Why did you put in six ordinary iron pulleys in the box-trimmer?

A. Because those had been injured by the fire too bad to be used again; they were warped out of round.

58 Q. Were the new ones you put in made by you, or did you get them elsewhere?

A. They were made by A. & T. Brown, of New York.

59 Q. Were they such pulleys as are usually kept on hand ready made by those dealing in that article?

A. They were.

60 Q. Were the wrought-iron shafts and supports which you put in new the same?

A. They were.

61 Q. Any other parts or portions which you put in new—were they ready made or kept on hand by dealers and machinists?

A. The rest of the parts I made.

62 Q. State whether or not your firm was in the habit of doing repairs for E. C. Smith; and, if so, for how long.

(Objected to as immaterial.)

A. We had done repairs for him ever since we have been in business.

223 63 Q. What is this that I hold in my hand?

(Model produced.)

A. The model of the box trimming machine that was left at my shop, as repaired by us.

69 Q. State fully.

A. It is the model as it left our shop—as we delivered it to Mr. Smith.

70 Q. Does it represent the machine as in use by Mr. Smith before or at the time of the fire?

(Objected to.)

A. To the best of my belief it does.

71 Q. Who made this model?

A. I did.

72 Q. State whether it is correctly made and truly and accurately represents the machine as you have testified.

A. It does.

73 Q. Can you designate by color on that model what portions were iron or wood? If so, do so.

A. The table or frame of black walnut represents the wooden part of the machine; the rest is iron and brass; some steel, some Babbitt metal.

74 Q. Portions of this model are of a red color; what do they represent?

A. Parts saved from the fire.

75 Q. Were any other portions saved from the fire than those colored in red?

A. I think the two supports to the shafts ought to have been painted red; they were saved; the spindles were saved, but not used.

(Model offered in evidence and marked Exhibit Model S.)

Cross-examined by Mr. KINGSLEY:

76 X Q. Were you aware that Mr. Myers had patents on all this machinery on which you made repairs for Mr. E. C. Smith at the time they were sent you?

A. I had never seen any of his patent papers. I had only heard so—that he had patents.

224 77 X Q. How long had you been superintendent or foreman for Morgan & Co., who made both these machines for Mr. Myers?

A. I think I was employed about four years.

(Objected to as already asked and answered, and incompetent and irrelevant.)

78 X Q. During that time did you have charge of the building of the Myers feeder and also the box-trimmer while thus employed by Morgan & Co.?

A. I did.

79 X Q. Had you not had an acquaintance with Mr. Myers and also with Mr. Lightowler and other parties by whom you were advised that those machines were patented by Mr. Myers during the time that you were so employed?

A. I have been so advised by both those parties.

80 X Q. And did you more or less have directions while so employed and give directions to men as to the manner of building those machines?

A. I directed the men how they should do their work in building these machines.

81 X Q. As foreman was it not your business to give directions to the men in building the machinery?

A. It was.

82 X Q. Did you see this machinery that you repaired or refitted before it was delivered at your shop for the repairs that were made?

A. I did.

83 X Q. Where did you see it?

A. I saw it in the ruins of the burnt building.

84 X Q. Did you see all of it?

A. I can't say whether I did or not; I saw most of it.

85 X Q. Who was with you when you saw it?

A. Mr. E. C. Smith, the owner.

86 X Q. Is that the only time you recollect that you saw it prior to its being delivered at your shop for repairs?

A. I visited the scene of the fire but once; was there half an hour or more.

225 87 X Q. Did your examination extend to the whole machinery in the ruins?

A. It did not—to the box-nailing machines, nail-feeders, and printing machines; that is all I paid attention to at the time.

88 X Q. Was your attention called to the planers, that you remember?

A. It was not.

89 X Q. To the saws?

A. No.

90 X Q. Did you see any of the planers?

A. I saw them—some of them; made no examination whatever.

91 X Q. Do you know whether they were repaired and run again by Smith or not?

A. I have no knowledge about it.

92 X Q. What machinery besides the nail-feeders and box-trimmer did you repair for E. C. Smith after the fire—your firm?

A. We did some repairs on the printing machine.

93 X Q. Whose make was it?

(Objected to.)

A. It was made by R. Morgan & Co. for Mr. Myers.

94 X Q. What repairs did you make to that?

(Objected to as incompetent, irrelevant, and immaterial.)

A. The repairs were very slight; only some parts that were worn; rebabbitted the boxes; believe I put a new pulley on—a new chain connecting the screws.

95 X Q. Was any portion of the machine burned up?

A. There was not, unless the ink rollers, made of glue and molasses; the machine was all metal. I don't remember anything being lost about it.

226 96 X Q. That is all the repairs you have named—all the machinery you repaired for Mr. Smith after that fire?

A. I repaired the nailers—nine of Swift's box-nailers.

(Objected to.)

97 X Q. What was the condition of the nine nailers when delivered at your shop?

(Objected to as before.)

A. Some of them were very little damaged; some of them were considerably damaged.

98 X Q. State in what particulars.

(Objected to as before.)

A. They were damaged by being warped; some parts broken. I can't remember now the details of each machine.

99 X Q. Were there any portions so damaged as not to be used by you in repairing?

(Objected to.)

A. There were.

100 X Q. To what extent?

(Objected to.)

A. I couldn't tell now; can give you the cost in dollars and cents.

101 X Q. Give us that.

(Objected to.)

A. About $2,200 for nine machines E. C. Smith paid me.

102 X Q. Do you remember the amount of material used and the work on the nine?

A. There was somewhere between $500 and $600 for material, I guess; the balance for labor.

103 X Q. You don't embrace the nail-feeders—the Myers feeders?

A. No: I am talking about the Swift nailers.

104 X Q. Are you aware how much, if made new, those nine nailers would cost?

(Same objection.)

227 A. Did I say nine nailers? It should have been twelve—twelve nailers and nine feeders; I can't say what the nailers cost that were made by Morgan & Co.

105 X Q. Have you built the same machines for Swift?

(Objected to.)

A. I have.

106 X Q. What did they cost?

(Objected to.)

A. I have from $400 down to $300, depending on the size.

107 X Q. What do you get of Swift for the same size as these?

(Objected to.)

A. About $340 apiece; that includes the feeder—the complete machine.

108 X Q. How much does the feeder cost?

(Objected to.)

A. About $40 for that size machine.

109 X Q. You say the nailers were broken some?

A. There were frames crushed in some places; the most damage was from warping—twisted out of shape.

110 X Q. Did you use those that were twisted out of shape in the repairs?

(Objected to.)

A. Some of the parts were not warped so bad but what I could replace them and use them again; some parts I had to renew.

111 X Q. How much material does it require to build one of these?

(Objected to.)

A. I should think somewheres about 1,200 or 1,300 pounds; don't remember exactly.

112 X Q. What does it cost a pound?

(Objected to.)

A. Four cents a pound. It can be bought cheaper.

113 X Q. What did you pay a pound for the material you used in these machines?

(Objected to.)

A. Three and a half cents a pound.

228 114 X Q. Did you pay the same for that used in repairing the Myers machines?

(Objected to.)

A. I did.

115 X Q. When called by complainant you were asked how much labor and material went into the repairs of the Myers machinery. Was what you then said correct?

(Objected to as not the question asked.)

A. It was.

116 X Q. Were these bills the only ones presented by your firm to E. C. Smith?

A. They were. I believe they are correct as to the charges on the Myers machinery.

117 X Q. You said you made some castings?

A. Yes; on the nailers. I can't tell the exact number of pounds. It is on the bill.

118 X Q. There is in the bill for box trimming machine a charge, one hundred and forty-four pounds castings. Where was that put?

A. I can't show it all on the model. I put some heavy angle irons on under the table different from anything on it before—cast-iron angle pieces extending across the table and fastened to the legs and table underneath for the purpose of stiffening the table. The rest of the castings were the brackets or supports and the two guides, an adjusting and self-adjusting guide; the loose washer for bearing against the work; two small angle irons for the self-adjusting guide; the bracket on the side of the machine. I believe that is all.

119 X Q. State if you used all the parts delivered by E. C. Smith to your shop in repairing the box-trimmer.

(Objected to as already answered.)

A. I did not.

120 X Q. State what you did not use as delivered by him.

A. I did not use the steel spindles nor the two cutter heads nor the washer or gauge for bearing against the work; that is all.

229 122 X Q. What parts of the machinery as this model is built represents what Smith delivered to you and which you used in the repair?

A. I used the adjustable hanger and the self-adjusting hanger, the two spindle pulleys, the two steel steps, the nuts on the steel spindles, the brass collars or oil covers that go over the steel steps, two shaft supports.

123 X Q. Was every other part of the model made new by you except as you have stated?

A. The cutter heads shown on the model were not made by me; all the rest was made by me, except what I purchased.

124 X Q. Were all the other parts named above made new by you or put into the machines by you in making the repairs?

A. They were new.

125 X Q. Will you now point out in the model all the things that were new?

A. The wooden frame or table, all the pulleys shown, the two adjustable guides, two angle pieces, the supports for the driving shaft, the bracket against which the spring of the self-adjusting hanger bears, the loose collar or gauge which bears againt the work, two steel spindles, and two shafts; I think I have got it all; I made no cutter heads.

126 X Q. Do you say they were used as brought to your shop?

A. They were not; they lie in my shop; I didn't substitute others; had nothing to do with it; they were put in by Mr. E. C. Smith, I suppose.

127 X Q. Could the machine be used without cutter heads?

A. No; not very well.

128 X Q. Describe whether that model has the necessary driving mechanism to work the machine.

A. It has the driving mechanism on, except the carrier; there was no carrier to that machine; I didn't put on one.

129 X Q. Have you seen the machine in Smith's shop since you repaired it?

230 A. I have seen it there; paid no particular attention to it; I believe there is a carrier on it.

130 X Q. Were there driving belts?

A. Yes; a belt to run the carrier. The machine was running and at work.

131 X Q. Did you go there to see if it ran right?

A. I did not.

132 X Q. Did your partner?

A. Not that I know of.

133 X Q. Who set up the machine?

A. I don't know; I had nothing to do with the machine after it left my shop.

134 X Q. How long was the carrier?

A. I can't say; it might be forty or fifty feet.

135 X Q. Is there a chute on this model?

A. There is none.

136 X Q. Did you notice if there was a chute on the machine as run by Mr. Smith?

A. There is a frame in which the carrier runs, supported on pulleys, which carries the boxes through the machine; I don't know if they call it a chute or what; it is simply a guide to keep the boxes from falling off; I saw it running.

137 X Q. The machine could not run without it?

A. To make it automatic it would be necessary to have it.

138 X Q. You didn't make it automatic in these repairs?

A. I didn't make any carrier.

139 X Q. Do you know who put in the carrier at Smith's shop?

A. I do not.

140 X Q. Does the model before you, with the additions made by E. C. Smith, of which you have spoken, embrace in all respects the machinery represented in the Myers box-trimmer?

(Objected to, as witness has not stated E. C. Smith has made additions.)

A. It does.

141 X Q. Then do you regard the box-trimmer, so repaired,
231 as then running in the shop of E. C. Smith as identical with that purchased from Myers, as made by Morgan & Co.?

A. This machine is not identical with the one made by Morgan & Co., although it performs the same work. Some parts of the machine were discarded entirely.

142 X Q. What parts have been discarded?

A. The yielding bar or guide which was designed to hold the boxes down in their place; the yielding bar or guide over the adjustable slide or guide, with the upright posts or beams which supported it; that is the only material difference, I think.

143 X Q. Are you not aware that Mr. Myers leaves those parts off in building his machines, and has for some time?

A. I am not; have not seen his machines.

144 X Q. In all other respects than what you have stated were the two box-trimmers substantially identical?

A. There is one more part that has been altered from the original machine; the self-adjusting bar was elevated on a level with the one on the opposite side in the original machine; in this it is lowered down on the table.

145 X Q. That change is not material, is it?

A. It is; the machine works a great deal better with it down there than it did up here.

146 X Q. What is the office of that self-adjusting guide?

A. To hold the box firmly against the guide on the opposite side of the machine, which is a fixture after being once adjusted.

147 X Q. Didn't it operate precisely that way before it was lowered and press the box in the same manner?

A. The parties who use the machines claim that it works better now; it pressed the box over to that side, of course, in the same way, but I think by lowering it it operates better, because it presses

right on the bottom of the box where the work is being
232 done, while before, when elevated, if the springs were a little stiffer of the self-adjusting bar than the ones on the opposite side it would cant the box up.

148 X Q. You don't call that any invention?

A. I shouldn't call it an invention.

149 X Q. Except as you have named, was the machine represented by this model rebuilt or repaired and as running at the time you saw it in Smith's shop the same the Myers box-trimmer?

A. It is the Myers box-trimmer.

150 X Q. The top part of Myers' trimmer, spoken of by you as having been moved, represented in the patent, do you regard that as necessary to the trimming of boxes in the Myers machine?

A. I do not. The Myers machine can be run without the top.

THURSDAY, *April* 12, 1883.

Hearing resumed.

Same appearances.

Cross-examination of THOMAS L. SMITH resumed by Mr. KINGSLEY:

(Complainants' Exhibit Model C shown.)

152 X Q. State whether that model represents the Myers box-trimmer as sold to E. C. Smith and used by him and of which you made the alleged repairs after the fire.

A. It does not, in my opinion.

53 X Q. State in what particular it does not, in your opinion.

(Objected to, that there is no evidence to show that this is a model of the machine sold to E. C. Smith or knowledge on the witness' part that that machine was ever sold to E. C. Smith.)

A. The machine used by E. C. Smith did not have the bar marked E.

233 154 X Q. Was there anything used on that machine which was a mechanical equivalent of that bar?

(Objected to.)

A. There was a loose washer, which is here marked F, that was used on the machine in place of the bar.

155 X Q. In what other respect does the model differ from the machine used by E. C. Smith before the fire, if any?

(Same objection.)

A. The only difference would be that the bars marked A on top of the frame and the uprights marked B had been removed; the chute had been removed; I don't see it marked on the model; these two shafts and pulleys under the chute had been removed (they are not marked); they are used for driving the carrier; that is about all the difference that I see.

156 X Q. When Morgan & Co. built the Myers box-trimmer dur-

ing the period you were there were they built as represented by the model now before you?

A. They were, with the exception of the bar marked E.

157 X Q. During the time you had charge of building the machines for Morgan & Co. you did not use the bar, but the washer instead—do I understand you?

A. Yes.

158 X Q. Do you regard the washer and the bar as performing the same office and producing the same result in the machine?

(Objected to as incompetent.)

A. They do.

159 X Q. And you regard them as mechanical equivalents of each other?

(Same objection.)

A. I do.

234 160 X Q. Was the top you have spoken of as having been removed on the machines built by Morgan & Co. during the time you were foreman?

A. They were on the machines.

161 X Q. I believe you have stated the machine you repaired was built by Morgan & Co. when you were foreman. Was that machine built by them according to this model except the washer?

A. With the exception of the bar marked E it was the same.

162 X Q. The chute represented here represents the machines as made in that respect?

A. Yes.

163 X Q. You saw that machine in Smith's place prior to the fire, on which you made the repairs?

A. I did.

164 X Q. At the time you saw it, before the fire, did Mr. Smith use a chute like this and had he extended it?

(Objected to, there being no evidence that he had extended it.)

A. I am not sure about that, but I think he had extended it.

170 X Q. He has used an extended chute since the fire?

A. He has.

171 X Q. What was to be gained by the extended chute?

A. If he used the machine as shown by the model they would have to carry the boxes to the trimmer from the nailing machine; by extending it the carrying to the machine was done away with.

172 X Q. Was it necessary to extend the carrier also?

A. It is.

173 X Q. And by thus extending it could he not trim a great many more boxes in the same time than if short like this?

(Objected to as incompetent and immaterial.)

A. I don't know as the machine would do any more work.

235 174 X Q. Couldn't you keep the boxes passing through more continuously by it?

(Same objection.)

A. I don't know as they would.

175 X Q. What was substituted in place of the large pulley left off?

A. Nothing; after leaving off the two large pulleys he extended the shaft here (marking S on the bearing) to the outside of the frame on one side and put a pulley on there and ran it by a belt from a pulley on a shaft beneath the floor. This change was made before the fire.

176 X Q. Did you make it for him, and when?

A. I made the longer shaft; I can't tell when; can't say how long before the fire.

177 X Q. In removing the two pulleys did the extension of that shaft and putting on a new pulley as you have mentioned operate the machine in substantially the same way as when first made?

(Objected to as incompetent.)

A. It did.

178 X Q. What did the two large pulleys operate in the machine?

A. They were part of the driving mechanism of the carrier.

179 X Q. Look at respondent's model (Exhibit S) and state what is the driving mechanism of the carrier in that.

A. This is the shaft marked S, and the two pulleys of it, that represents the change made in the other machine prior to the fire.

180 X Q. Have you read the patent of the box-trimmer?

A. I have.

181 X Q. Examine that in connection with the model C and state what constitutes the driving mechanism of that machine.

(Objected to, as the patent speaks for itself.)

236 A. The driving mechanism consists of the shafts and pulleys with their supports; the belting is a part of it.

182 X Q. Would you call that driving mechanism which produces power in any machine or contributes to it?

A. I should.

183 X Q. Was any of the driving mechanism saved from the fire and presented to you for repairs on this machine, or was it made new?

A. The driving mechanism was made new with the exception of a couple of shaft supports supporting the shaft S on model C.

184 X Q. When the top marked A and B was removed from the Myers machine would it not perform its work in box-trimming just as well?

A. I hardly think it would.

185 X Q. Why not?

A. Because there would be no yielding bar to hold the box up against the adjustable guide.

186 X Q. Would not the bar underneath carry the box just the same and hold it in its place—the bar E?

A. It would; but that was not on the machine in question.

187 X Q. Then you think that by substituting the bar in place

of the washer you could remove the top and it would operate the same?

A. It would.

188 X Q. In respondents' model S were the guides in the machine as you repaired it made exactly as in this model so far as the chute?

A. It was; so far as I know.

189 X Q. Does the carrier as used by E. C. Smith since the fire on the repaired machine embrace in its combination what is known in mechanics as a chute or guide for carrying the box?

A. It forms a guide, but I think not a chute; a chute is a fall.

190 X Q. What is the difference between a guide and a chute in mechanics?

237 A. I don't know as there would be much difference, but a chute must have a descent.

191 X Q. May not a chute have a tapering on the sides as well as a descent so as to direct a box or other thing?

A. It could be made tapering.

192 X Q. And then it might be called a chute?

A. It might be called a chute.

193 X Q. Does that carrier bring the boxes to the trimmer from a long distance, and also carry the boxes down into a lower room as they pass out, as used by Mr. Smith?

A. I can't say how far it carries the boxes; it carries them to and away from the trimmer, but not onto any other floor.

194 X Q. Does this carrier narrow in its construction as it approaches the machine—the one he has used and so repaired by you since the fire?

A. I believe the sides are parallel the whole length.

195 X Q. How much wider than the boxes that are trimmed?

A. Wide enough for the boxes to pass freely through it—I can't say exactly how much.

196 X Q. In respondent's model S there appears to be a tapering for the box to pass in and the carrier is brought directly up to the model and connected with it?

A. The carrier is brought up to the guides.

197 X Q. Don't these guides operate as a chute in passing the box in easily—the way it is constructed?

A. They form a continuation of it, one side being yielding.

198 X Q. Don't the guides operate the same as the chute in the Myers' machine to pass the box in in an easy position and proper manner?

(Objected to.)

A. It operates the same as in the Myers machine.

238 199 X Q. Why did you not use the cutters in repairing the machine?

A. The cutters of another maker was used; these were not used because Mr. E. C. Smith told me he was going to use cutter heads made by Mr. Tidey.

200 X Q. Were the cutter heads in a condition to have been used successfully in the repairing to make good work?

A. They were; wanted polishing up a little.

201 X Q. You state that the parts of the trimmer were all disconnected when brought to you?

A. They were.

202 X Q. Could the box-trimmer have been made to run and work by simply putting the parts brought to your firm together without putting in anything new?

A. It could not.

203 X Q. Look at the first and the last claim in the patent and state what you find in them which embraces the parts brought to your shop for repairs by the defendant?

A. "A self-adjusting cutter (witness reads from the patent) having a gauge to bear against the work," in the first claim; as I understand it that means the cutter-head with the cutter complete. In the last claim, "a self-adjusting cutter, an adjustable cutter;" that is all he brought to me; that is embraced in the last claim.

204 X Q. Was every other part named in that last claim made new by your firm?

A. It was not.

205 X Q. Or by E. C. Smith?

A. I don't know what he did.

206 X Q. What did your firm do in making the several parts embraced in the last claim of the patent?

A. Made the supporting frame or table, self-adjusting guides, and driving mechanism.

207 X Q. And as you saw the machine in operation by the
239 defendant since the repairs made by you, what other parts did it embrace named in that last claim?

A. The carrier. It had what we have been calling a chute. It did not have what is described in the patent as a chute—not as so described.

208 X Q. The longer the carrier is the less tapering it would be in order to perform its office, would it not?

A. I should think it would work better if the sides are parallel.

209 X Q. Did you put any repairs on the adjustable cutter or self-adjusting cutter?

A. I did no repairs on them.

210 X Q. Were they made new, the adjustable or self-adjusting cutters?

A. I don't know whether they were new or second-hand. I didn't make any at all.

211 X Q. Were the bars or the cutters, as brought to your place for repairs, self-adjustable when brought, or was it necessary for you to add something in order to make them so operate as adjustable or self-adjusting? And, if so, state what you did.

A. As brought to me, they were not. In order to make them so I had to make a frame or table and the driving mechanism.

212 X Q. Did you supply the mechanism necessary to make them adjustable and self-adjusting?

A. I did.

213 X Q. How many pulleys are embraced in the Myers box-trimmer? Point them out on model C.

A. I find ten here altogether. There are two missing which should be here, a tight and loose pulley on the main shaft; that would make 12.

(Machinery shown.)

214 X Q. Examine this and see if you find all the parts brought to you by Mr. E. C. Smith for repairs.

A. I find two pieces missing.

215 X Q. Are these parts of a box-trimmer similar to those brought to your firm and which were used by you in making the repairs?

240 A. They are, except some pieces that are missing. I used everything there is here. There are some parts missing that I did use—the base plates for the hangers and the swivel pin.

216 X Q. Is the base plate part of the hanger?

A. It is.

217 X Q. Why did you not use the spindles in making the repairs?

A. They were bent and somewhat worn, and I thought it cheaper to make new ones.

218 X Q. If they had not been bent would you have used them?

A. I would.

219 X Q. Was there any part of this trimmer brought you disused by you in making repairs for the reason that it had been too much worn?

A. There was one piece—the gauge for bearing against the work—the washer.

220 X Q. That was the only piece disused in consequence of being worn?

A. Yes; for being worn, wholly.

221 X Q. Other parts were disused in consequence of injury by the fire?

A. The parts that I used were not injured of any account.

222 X Q. Did you mend any part of the machinery in making the repairs in the trimmer?

A. I did not.

223 X Q. What was the condition of the nail-feeders when they were in your shop for repairs?

A. I can't describe them minutely.

224 X Q. Give it as near as you can.

A. There were nine nail-feeders brought there, all hanging together; the main frames were damaged badly by being warped; the nail receptacles or chains were bent and broken, some of them; the supports for the main frame were bent and broken; the boxes for holding the nails were warped out of shape and broken; the springs on the front of the machine were bent out of shape. I guess that is as near as — can get at it from memory.

241 225 X Q. Were any of these feeders destroyed or broken up when brought to you?

A. There was none of them destroyed; there were parts of each one broken and warped.

226 X Q. What parts of each one were destroyed?

A. There was some of the nail sockets or holders on each of the machines destroyed, the main frames, or all of them; I think there was seven of the boxes for holding the nails destroyed, as near as I remember.

(Objected to as not included in the patent.)

There was the supports for holding up the feeder itself; I believe there were seven pair of them broken—the legs.

(Objected to as not included in the patent.)

There was a piece—the springs in front; they were all destroyed; there were some of the receptacles broken, but not all.

(Objected to as no part of the patent.)

227 X Q. What proportion of the sockets in the belt were destroyed?

A. There was about two-thirds of the nail-conveyers or sockets destroyed.

228 X Q. And were they made new by you, or did you put in entirely new endless belts?

A. I used one-third of them that was saved; the other two-thirds I made new.

229 X Q. What parts of the receiver brought to your place for repairs did you leave out or not use in making repairs?

A. I don't know what you mean.

230 X Q. What parts received by your firm did you use, and what did you disuse in making repairs on this feeder?

A. I used one-third of the nail-conveyers, all the shafts and supports, all the traction wheels, the supporting pulleys, the ratchets and pawls, connecting rods, a portion of the nail receptacles, two pair of the legs or stands for connecting the machine to the nailer, a couple of the nail boxes, the ratchet arms and pins; I
242 guess that is about all; I didn't use about two-thirds of the nail-conveyers, the main frames, a portion of the nail receptacles; I believe seven of the nail boxes, seven pair of the supports for connecting the machines to the nailer.

231*a* X Q. What were those supports?

A. A casting which is bolted to the top of the box nailing machine for supporting the nail-feeder.

232*a* X Q. Were they all used—these parts—to connect the nailer and the nail-feeder?

A. That is what they are used for.

233*a* X Q. Do they comprise the necessary mechanism for operating the feeder or not?

A. Not necessarily.

234*a* X Q. Do they have the office of working the mechanism or any part of it?

A. They do not.

235*a* X Q. What is the driving or working mechanism of the feeder?

A. The feeder is worked by a ratchet and pawl connected by a rod to what is called the cross-head of the nailing machine.

236*a* X Q. Did you use an endless belt in the feeders that were repaired or a chain?

A. I made parts of an endless chain or belt—about two-thirds of the parts—on the whole nine machines.

237*a* X Q. The transverse rods or bars on the endless belts—were any of those broken or not?

A. There were—about two-thirds.

238*a* X Q. Did you make any new pulleys, and how many?

A. I made none.

239*a* X Q. Were there any repaired?

A. There was none repaired.

240*a* X Q. What do you find is the independent belt-supporting mechanism in the nail-feeder? Describe it.

A. I should suppose that the main frame is the belt-supporter.

243 WEDNESDAY, *May 2d*, 1883.

Hearing resumed.

Cross-examination of THOMAS L. SMITH resumed by Mr. KINGSLEY:

(Witness shown nail-feeder.)

231 X Q. Say whether that is made as the machines sold to the defendant Smith, and as described, as you understand it, in the letters patent of Myers, the plaintiff; does this machine differ in any respect mechanically? If so, state in what respect.

(Objected to; no evidence to show that this is a representation of the machine sold to Smith, and the question assumes facts not proved in the case.)

A. The machine is the same as those sold to Mr. Smith, with the exception of the friction brake on the main shaft of the feeder; that was not used on any of Mr. Smith's machines.

232 X Q. That is the only difference you see between the machines made and sold to Mr. Smith and this one here present?

A. That is the only difference.

233 X Q. Will you look at the machine and say what parts of the same were made new by your firm after the fire in those nine nail-feeders?

(Objected to as already answered.)

A. All of the bed plates or main frames, about two-thirds of the nail-conveyers, about four of the boxes for holding nails.

(Objected to, that the boxes are not included in the patent.)

As near as I remember, seven pair of legs or supports for the machine for the attaching the feeder to the nailing machine; I think

three or four of the nail receptacles, but that I am not positive about.

(Same objection.)

I believe that is all.

234 X Q. The necessary connecting mechanism of the feeder with the nailer, does it appear here?

244 A. Yes; those conduits are part of a nailing machine, and the nails are carried from the nail receptacles to the driving parts of the nailer by them.

235 X Q. And in what condition were these conduits in, and were they remade or not?

(Objected to as not part of the nail-feeder or in the patent.)

A. I didn't receive any of those for repairs.

236 X Q. Being brass, were they not likely to melt in the fire?

A. I suppose so; I don't know what became of them at all; I made new ones; we usually supplied five to a machine, and one to each line of nails that is used.

(Witness shown rod and asked what it is, and for what purpose used in the machine.)

A. It is a connecting rod used for driving the nail-feeder.

237 X Q. Were those connecting rods you just spoke of supplied anew or not?

A. They were not.

238 X Q. Were there any repairs made on them?

A. Nothing more than to straighten them where bent.

239 X Q. Were there new rivets put in the endless chain or not, and were they all new?

A. There was a few new ones used; they were not all new.

240 X Q. Was each machine supplied with new rivets, more or less?

A. They were.

241 X Q. Did you not put in new rivets wherever you put in new cross-bars in the endless chain, and did it not become necessary to do that?

A. I did not with all of them; I used some of the old ones.

242 X Q. How did you get the old rivets out?

A. Drove them out with a punch.

243 X Q. Didn't that injure them more or less so you couldn't replace them?

245 A. It might leave a few of them short; but they were generally long enough to rivet again.

244 X Q. Would not all that light machinery in the endless chain be likely to be destroyed, especially the rivets and nail-conveyers, by the intensity of the heat?

(Objected to on the ground that the witness, having received the identical machinery and parts of it which have been injured in the fire or repaired, has already testified or can testify as to the exact

facts, and that what would be likely to have occurred is, under these circumstances, incompetent, irrelevant, and immaterial.)

A. It would not.

245 X Q. Why would it not?

A. The reason why it would not was, I suppose, because the fire wasn't hot enough; very few of the conveyers were melted; about two-thirds were destroyed by the fire; they were destroyed by being warped or bent and broken; a very few were melted so as to injure them; none of the rivets were melted.

246 X Q. Are the springs in the receptacles a part of the receptacles?

(Objected to as not being a part of the patent.)

A. The spring is a part of the receptacle. The springs were bent and the temper out of them through the heat; none of them were broken.

247 X Q. Did you use them in making the repairs?

A. I did not.

248 X Q. Will you look at the pawl and ratchet in the machine and state what condition they were in on the nine feeders; were they repaired or not?

A. Just brightened up—pins brightened up; they were all used, as near as I remember.

249 X Q. Was the bracket and the adjusting screw con-
246 nected with the bed plate? State what condition they were in—whether they were repaired and whether they were used again in the repairs.

(Same objection.)

A. The brackets were all in good condition and used again; some of the adjusting screws were bent and new ones furnished; I don't remember exactly how many.

250 X Q. Have you now described all the parts of the nail-feeder that were used there and their condition?

A. I have not; I have not described the shafts, the carrier pulleys or supporting pulleys, and the tooth traction wheels; also some of the bolts, bolts for bolting machine on the uprights or supports.

251 X Q. State the condition of each after the fire and whether they were repaired or used in replacing these machines.

(Objected to as having been already fully answered.)

A. The supporting pulleys and shafts, the tooth traction wheels and shafts were in good condition, and all used in the repairs of the machines; some of the bolts were used again; I can't say exactly how many.

252 X Q. Were any of these parts refitted or repaired?

A. There was no work done on them—only polishing; I don't know but one or two of the traction wheel shafts might have been straightened—being bent.

253 X Q. What is the driving mechanism in the Myers nail-feeder?

(Objected to on the ground that it is disclosed by the patent and speaks for itself.)

A. The ratchet and pawl, the connecting rod, connecting to the cross-head of a box-nailing machine.

254 X Q. Was the endless nail receiver and conveyers substantially broken up and destroyed when brought to you for re-
247 pair, and could it have been used without supplying entire new parts, such as you have mentioned in your testimony?

(Objected to, first, already answered; second, indefinite in not specifying the facts; third, incompetent.

A. It was partially destroyed; it was necessary to make some new parts.

255 X Q. Was two-thirds of it destroyed?

(Objected to as already answered several times.)

A. It was.

256 X Q. Were these nail-feeders sold to the defendant and repaired by you made in two or more sections or not and adapted for operation in one or more sections independently of the other sections?

A. They were not; I think Mr. Myers never made any conveyer in sections, as set forth in claim 3 of the patent.

257 X Q. What proportion of the transverse bars were broken?

(Objected to as already answered.)

A. About two-thirds of them; they are the conveyers.

258 X Q. Were any of the toothed traction pulleys destroyed so that they could not be used?

A. There was none destroyed; they were not injured.

259 X Q. And the independent belt-supporting mechanism, was it injured; in what condition was it in? Please describe it and its condition.

A. The independent belt-supporting mechanism, consisting of two brackets, two supporting pulleys, and one shaft, upon which the pulleys revolve, for the purpose of supporting the chain or nail-conveyer, were all in good condition without exception, and were all used in the repairs; they were not repaired themselves; they were repolished and used again.

260 X Q. Could the parts of that machine as brought to
248 you by Mr. Smith have been replaced so that the machines would work as they did before the fire without making any part new?

A. It would not.

261 X Q. Were any of these parts destroyed or injured mended in the repairing, or were those parts made new?

A. There was no part that was mended or patched; parts that were broken were made new.

262 X Q. How was it in the box-trimmer in that respect also?

A. There was no parts of the trimmer that were patched or mended; they were made new.

263 X Q. Were there any parts of the nail-feeders you have spoken of left out in repairing them in consequence of their being worn so that they could not be used?

A. There was no parts of the nail-feeder that were left out on account of being worn.

264 X Q. And was there any part left out in the box-trimmer for the reason that it was too much worn to be used again except the washers you have spoken of?

A. The spindles were left out from being worn and bent; that was all of the parts I received.

265 X Q. Would you have left out the spindles in the repairs if they had not been bent?

(Objected to as incompetent.)

A. I think I should have used them if they had not been bent but they were thrown away from the fact that they were worn and, bent.

266 X Q. Were they left out of the repairs because they were worn out or not?

(Objected as already answered.)

A. They were not.

267 X Q. Could any of the injured parts of these Myers machines have been repaired simply by patching and mending so that the machines would work well?

A. There was some parts that could have been patched.

249 268 X Q. But you did not think it advisable or best to do so?

A. No.

269 X Q. What is the making of a machine, mechanically speaking?

A. Well, to start with, I should want to make drawings and from the drawings make my patterns of the various parts, from the patterns the castings and forgings, do the necessary finishing on each part, assemble those parts, and I believe I have a machine.

270 X Q. What do you call the constructing of a machine?

A. Constructing and making are about the same thing, I should think.

271 X Q. Do you call making a machine to build it new?

A. I would call making a new machine building it new.

272 X Q. What would you call remaking it?

A. Making another machine.

273 X Q. You couldn't remake a machine, then?

A. I am not an expert; the way I understand it, remaking a machine would be making another one like it; repairing would be restoring a machine to a sound condition that has been partially destroyed.

274 X Q. It is not necessary, then, to be totally destroyed in order to be repaired?

A. If wholly destroyed I do not see how you can repair it—nothing to repair.

275 X Q. If a machine consists of distinct separate parts and one-half of those essential parts are destroyed and they have to be made new again in order to work the machine would you call that repairing the machine or making it new in part?

A. I would call it repairing.

276 X Q. If the machine was injured by a second accident
250 and all the old parts were destroyed and only the new parts remain would that be the original machine or a new one?

(Objected to as incompetent and theoretical.)

A. I would call it the original machine.

277 X Q. Has not all the essential parts of what constituted the original machine been destroyed and made new by the first and second accidents spoken of in the two previous questions?

(Same objection as before.)

A. That is a question that has puzzled better men than I am; by the two accidents probably it has been made new; still, if a machine has been partially destroyed and repaired, I should consider it still the original machine.

278 X Q. Were not half the essential parts of the machine destroyed and made new by the first accident; and, if so, was not the machine remade or rebuilt to that extent?

(Objected to on the same grounds as before.)

A. It is made new to that extent, of course.

279 X Q. And would not the making of the other half of the essential parts new constitute mechanically a new machine?

(Same objection.)

Or wouldn't it be making the other half of the machine new?

A. It would be making the other half new.

280 X Q. How many machines in Smith's shop at the time of the fire were covered by patents, so far as you were advised, and whose machines were they?

A. There was Myers' nail-feeders, some printing presses of different kinds, some box dressing machines, Bopp's patent, and the box-trimmers; there was 12 Swift's nailers. I don't know whether there was a patent on them or not. There were planing machines there; do not know whether they were patented or not.

251 281 X Q. Do you know what the Swift nailers cost Mr. Swift when he purchased or what was their valuation?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I don't know. I never knew what Mr. Swift got for any of his machines that he sold at all.

282 X Q. Were the Swift nailers heavier machines than the Myers or not, and stronger?

(Same objection.)

A. They were, a great deal.

283 X Q. Were any of the machines of that shop that you are acquainted with as fragile as the Myers machines?

(Same objection.)

A. I don't know of any that would be as fragile as the feeder. There were machines there as liable to be destroyed as the feeder—the planing machines and the resawing machine.

284 X Q. Were not they of much heavier construction?

A. They were a much larger machine, but take them in proportion and I don't know as there would be much difference.

285 X Q. What were they made of?

A. Iron and steel. They were damaged a great deal more than the Myers feeder, I think.

286 X Q. Did you see the 70 tons of old iron after the fire of which Mr. Joslyn spoke?

(Objected to.)

A. I saw a quantity of old iron, but I cannot say how much. I did not examine it closely; saw a large pile of scrap iron, as I could see anything passing along.

287 X Q. What was its condition as you saw it?

(Same objection.)

A. It was broken up in pieces, warped, and twisted out of shape.

288 X Q. Did you notice what kind of machines comprised this old iron?

252 A. There were parts of planers, resawing machines, old pulleys and hangers, shafting; all the stuff that was in the factory in the shape of iron.

289 X Q. Any parts of box-trimmers?

A. The parts of box-trimmers had been selected from that and sent to my shop; were taken out of the ruins after the insurance adjustment.

290 X Q. Were these parts taken from the bulk of old iron that you saw or heaps?

(Objected to.)

A. I can't answer that. I didn't see any of it taken out.

291 X Q. Do you know what became of the old iron?

(Same objection.)

A. No; I don't.

292 X Q. Were you informed what became of it?

(Same objection.)

A. I was not.

293 X Q. Ever hear Mr. Smith say what he got for it?

(Same objection.)

A. I did not.

294 X Q. Hear him say that he sold it?

(Same objection.)

A. I never did.

295 X Q. How long after did you see the old iron at the ruins?

(Same objection.)

A. I can't tell exactly. I went there it may have been a month after.

296 X Q. How much was old iron worth at that time per ton?

(Same objection.)

A. I don't know. I don't deal in it; sometimes give it away to get rid of it.

297 X Q. Did not Mr. E. C. Smith give you to understand at the time he sent this machinery to you for repairs, soon after or before, that he would protect your firm against any damage by reason of your repairing the same?

253 A. He did; he promised to do so.

Nail-feeder offered in evidence, marked Plaintiff's Ex. Nail-Feeder.

(Objected to as incompetent, immaterial, and irrelevant.)

Six conduits offered in evidence, marked with tags from 7 to 13.

(Objected to as incompetent, &c., and also as no part of the patent.)

Connecting rod offered in evidence and marked Plaintiff's Ex. Tag 14.

(Objected to as incompetent, &c., and also as no part of the patent.)

MAY 9, 1883.

Hearing resumed.

Same appearances.

Cross-examination of THOMAS L. SMITH resumed by Mr. KINGSLEY:

298 X Q. Look at the chain in Myers' patent No. 215,153, Ex. A, the first, and answer whether the feeders that you refitted for the defendant Smith embraced what is in the first claim in their mechanical construction.

(Objected to as being incompetent and as being a conclusion of law from the testimony in the case.)

A. The machines which I refitted were the same as claim 1 in this patent. They were all constructed as claimed in this.

299 X Q. Originally and as repaired by you?

A. Yes.

300 X Q. Did the nine machines refitted by your firm contain an endless chain or nail-receiver provided with sockets for nails in

combination with the toothed traction pulley or pulleys and independent belt-supporting mechanism?

(Same objection.)

A. They did.

254 301 X Q. Did such nail-feeders embrace the receiver and conveyer moved intermittingly by a suitable mechanism, as by a ratchet attached to the end of shaft D and operated by a pawl attached to an arm loosely fitted to the shaft, and which is moved intermittingly by means of a connecting rod attached to the reciprocatimg head of the nailing machine?

(Same objection.)

A. They did.

302 X Q. Did they embrace the teeth of the ratchet, which was so adjusted that the shaft was only moved when the head of the nailing machine moves upward, and then only sufficiently to move the receiver and conveyer one bar, that being the time when the nail supports are empty and the nail-drivers withdrawn from them?

(Same objection.)

A. They did not. The machines repaired by our firm were so constructed originally and when repaired as to move the nail-conveyer on the downward stroke of the cross-head.

303 X Q. Does it make any difference whether the stroke is downward or upward, practically, as long as it performs the office of feeding the nails to the driver?

(Same objection.)

A. It makes no difference.

304 X Q. Any change that you introduced, then, in the repairing you regarded as substantially the same as that used in the Myers machine, do you not, mechanically speaking?

A. I made no change when I repaired the machines.

305 X Q. Were all Morgan and Company's machines made that way?

A. Yes; except the very first one.

306 X Q. Was that made to work?

A. Yes; to work on the up stroke of the cross-head, and that was changed to the down stroke.

255 307 X Q. Did it work any better that way?

(Objected to as immaterial and incompetent.)

A. It did.

308 X Q. What alteration did you have to make to make the difference of the stroke in that machine?

(Objected to as before.)

A. The arm was changed from the back to the front of the shaft of the machine.

309 X Q. Was that simply a mechanical change?

(Same objection.)

A. That is all.

310 X Q. Have you seen the feeders running since they were repaired in defendant's shop, and are they running at the present time?

(Objected to as already answered, and incompetent.)

A. I have; there is a portion of them running; I don't know the number.

311 X Q. Have you recently examined or seen them?

A. I have not.

312 X Q. Look at Myers' patent 201,822, Ex. B, at claim 8, and state what parts of that claim were saved from the fire and used by you in repairing the Myers box-trimmer.

A. A self-adjusting cutter and an adjustable cutter; those were saved, but not used, another maker's being substituted for them; there were a couple of the supports of the mechanism; I believe that is all.

313 X Q. Then you didn't use in repairing the Myers box-trimmer any of the parts named in the 8th claim of that patent, did you?

A. I used a part of the driving mechanism—a couple of shaft supports or boxes.

314 X Q. What is the driving mechanism in the Myers machine?

A. Shafts and pulleys and the supports.

256 315 X Q. Were they not part of the carrier instead of the driving mechanism—these two boxes?

A. They were part of the carrier driving mechanism.

316 X Q. Do you say the self-adjusting and adjustable cutter were saved?

A. They were.

317 X Q. As brought to you would they work, or did they need some parts supplied to make them operate as adjustable and self-adjusting cutters?

(Objected to.)

A. It was necessary to supply parts of the machine to make them adjustable or self-adjusting.

Redirect by Mr. CHILDS:

318 Q. Why was Tidey's cutter substituted in place of Myers' in the machine that you repaired?

A. Mr. Smith's manager had an idea that they would work better than the other.

319 Q. Is there a substantial difference, and is Tidey's cutter regarded as an improvement on Myers'?

A. I should say it was from the fact that the cutter head contained more cutters than the other.

320 Q. What repairs would have been necessary on this Myers cutter to have made it as it was before?

A. Polish up the heads and temper the cutters; that is all.

321 Q. In repairing that trimmer you did not make new any cutter adjustable or self-adjusting or having a gauge to bear against the work?

(Objected to as leading.)

A. I did not.

322 Q. Did you make any carrier or table having a chute or guards?

A. I made no carrier or chute.

323 Q. What carrier or chute was it that Mr. Smith used with this Myers trimmer after the fire which you repaired?

257 A. It was the carrier and chute belonging to the machine which was not in the fire.

324 Q. State whether the parts of this box-trimmer which were saved from the fire and used by you in repairing the machine are or not the essential and important parts of the machine; if not, state what parts are.

A. They are essential and important parts.

325 Q. Why?

A. From the fact that I could not repair the machine very well without them. The machine could not be made to run without them very well.

326 Q. Answer the same question as Q. 324 as to the nail-feeders.

A. They were.

327 Q. Look at Exhibit A, patent for nail-feeders, and say whether nail-boxes or receptacles or the springs in front of the receptacles or the supports or the particular connecting operating devices are made any parts of the patent in terms.

(Objected to.)

A. I do not find any of them in the claims.

328 Q. Do you in the body of the patent?

A. In the specifications, you mean? I do not find any springs or receptacles or any supporting attachment nor nail boxes. I find that he makes no claim to the particular connecting operating devices described.

329 Q. Why did you make these repairs on these machines?

(Objected to as incompetent, irrelevant, and calling for motives of witness.)

(Question withdrawn.)

320 Q. How did you come to make these repairs on these machines?

(Same objection.)

A. Mr. Smith, the owner of them, brought them to my shop and ordered the work done. He said he had a right to have the work done, and I did it in good faith. If there had been any

258 doubts in my mind about the right to have the repairs done I don't know as I should have done it.

By Mr. KINGSLEY:

331 X Q. How did you come to have Smith agree to protect you if you had no doubts?

A. I have already told you that I took his word that he had the right as a responsible business man. I never asked him to protect me; he offered it—claimed that he was the owner, had a right to have the work done, and would protect me.

By Mr. CHILDS:

332 Q. Was this work necessary in refitting these machines at the time you received them anything more than repairs, in your opinion?

A. No.

333 Q. Were you notified by complainant or any one in his behalf to desist from refitting these machines?

A. I was not; have no recollection of it.

334 Q. When was any notice brought home to you claiming an infringement in this case, and by whom?

A. The first notice that I received about it was, I believe, when Mr. Leech called at our shop. The work was just about done. I believe all we did afterwards was painting. I don't know but Mr. Lightowler saw me two or three days before that.

335 Q. Did you request indemnity from the defendant because of any idea in your mind that to refit these machines was to do something more than to repair them, or was it because the machines were patented machines generally?

A. Because I believed them to be patented machines.

Adjourned to Friday, May 18th, 1883, at 11 a. m.

259 FRIDAY, *June 8th*, 1883.

Hearing resumed.

Same appearances.

Cross-examination of THOMAS L. SMITH resumed by Mr. KINGSLEY:

336 X Q. Will you state just the manner in which you commenced and carried on and repaired or rebuilt these Myers machines—that is, I want to know the necessary steps you took in the building of each kind of machine, and what parts were first made in each of the machines, and just how the parts were brought together.

A. The first thing we did was to take the nail-feeder as it came from the fire and take it apart, separate it entirely; we took the whole of them; the work was done on all at the same time. We selected out such parts as could be used again; then we supplied the parts necessary to restore the machine and put them together into working order. We first overhauled the chains or nail-conveyer; then the frame and the nail receptacles; straightened up the shafts

and polished them; painted them, I guess, is about the last thing we did to them.

337 X Q. In what way did you supply the necessary parts in the refitting of these feeders; in what manner did you make them or supply them?

A. We took some of the parts that were in good condition and used them for patterns from which we got castings; then we did the necessary drilling and filing and whatever was necessary to do in the way of finishing; the parts that had been used for patterns were put back and used in the machines after sufficient castings had been made from them.

338 X Q. What was the process of making the castings or steps?

260 A. The patterns were taken to a foundry and there moulded in sand by mechanics who are called moulders; iron is then melted and poured into the mould; that is the process of making castings, I believe. We call that a casting.

339 X Q. What part of the feeders did you cast in that manner?

A. The chain or nail-conveyer, part of it, some of the nail receptacles, the standards or uprights for connecting the feeder to the nailing machine, the frames, main frames, and some of the nail boxes. I think that is about all.

340 X Q. Was everything that was made new cast in this manner—in the nail-feeders?

A. I believe so, except springs on the nail receptacles.

341 X Q. Where were these castings made?

(Objected to as incompetent, irrelevant, and immaterial.)

A. They were made by Brade Brothers, of Greenpoint, iron founders.

342 X Q. It was necessary that the castings should be constructed at some foundry, was it not?

A. It was.

343 X Q. When these castings were made were they brought to your shop?

A. They were.

344 X Q. And did you add to these castings and put into them the old parts that you used in repairing?

A. I did.

345 X Q. Which was first laid or constructed—the new or the old parts—in the assembling of the machine?

A. The lighter parts have to be attached to the frame or bed plate; when everything is ready to assemble we attach the lighter to the heavier.

346 X Q. And which were the heavier in these machines—the new or the old?

A. The frame or bed plate was the heaviest casting in the machine which was new; in all nail-feeders they were all assembled alike.

261 347 X Q. Will you now state the manner in which you remade or repaired the box-trimmer and the manner in

which the new parts were made and constructed, and also the manner of assembling the parts of the trimmer so that it was completed for work?

A. I went and saw the trimmer which Mr. Smith owned, which was not burned, from which I made a drawing of the table and frame and got the length of the shafts, &c., sizes of pulley, and their supports; the drawing of the table and frame I gave to a carpenter, who constructed it for me; the pulleys I got from A. F. Brown, of New York, pulley manufacturer; I made a pattern for the supports of the driving shaft myself and a pattern of the adjustable guide; from those patterns I had castings made; we made new spindles, collar, or gauge for bearing against the work; we then attached or assembled the various parts to the table or frame—painted it; that is about all.

348 X Q. Who did the casting?

A. The same parties that made the others.

349 X Q. Did not the new parts thus made form the basis or frame-work of the trimmer, to which the old parts saved from the fire were attached or connected by you?

(Objected to as incompetent; witness has stated as to the facts, and whether it was the basis or frame-work it is not competent to inquire of him.)

A. I should consider that the parts saved from the fire—they are the essential parts of the machine—are the basis upon which I worked.

(Objected to and motion to strike out as not responsive.)

350 X Q. (Repeated.)

(Same objection, and that it has been answered.)

A. The old parts were certainly attached to that frame-work, but I do not call that frame-work the basis of the machine.

262 351 X Q. Did you not first, in assembling the parts, connect the same and attach the same to the frame-work or the new parts that you had made?

A. I did.

352 X Q. Have you not said in answer to X Q. 312 that there were brought to your shop only the self-adjusting and adjustable cutters and a couple of supports of the driving mechanism, and that they were all of the parts saved from the fire and brought to your place for repairs which were embraced in the 8th claim of the letters patent, Exhibit B, 201,822, and that the cutters were not used, and upon this state of facts will you state whether this trimmer thus repaired, in your opinion, by the use of these two supports only, is not a violation of the Myers invention under the 8th claim or an interference with that combination in the 8th claim?

(Objected to—

First. As incompetent.

Second. As being an improper method of inquiring of the witness as to what he had testified to.

Third. That the witness is not a patent expert and does not claim to be; and,

Fourth. That the matters inquired of are matters of law.)

A. No; I don't think it was.

353 X Q. Would the use of the two supports and all the other parts embraced in the 8th claim made new be the same machine as was sold by Myers to Smith, in your opinion?

(Objected to as incompetent, speculative, calling for opinion of a patent expert, and that there were other parts saved from the fire and used in repairing in addition to those in counsel's question.)

A. These two supports would be a very small portion of the eighth claim. If all the rest of the parts mentioned in the eighth claim of this invention were made new it would be a new machine.

263 354 X Q. How many are the distinct parts covered by the eighth claim, as you understand the mechanism?

(Objected to as incompetent and as calling for the opinion of a patent expert.)

A. There are nine distinct parts in that claim.

355 X Q. State what they are.

(Same objection.)

A. Supporting frame, the table, chute, and guards, self-adjusting cutter and adjustable cutter, the carrier, self-adjusting guides, and driving mechanism.

356 X Q. What do you regard as the most important thing or part claimed by Myers in this patent, mechanically speaking, embraced in this machine?

(Same objection.)

A. The adjustable and self-adjustable cutter, cutter heads, and spindles and their attachments. I regard those as one thing.

357 X Q. What do you consider the next most important in that invention and machine?

A. The carrier; the chute I don't consider of much account.

358 X Q. What do you consider as the next most important part in that machine?

(Same objection.)

A. I should say the driving mechanism.

359 X Q. What next after the driving mechanism?

(Same objection.)

A. I suppose the adjustable guides came in next; that about comprises the whole.

360 X Q. And finally what do you regard as the next most imtant thing in it after the adjustable guides?

A. The gauge to bear against the work.

361 X Q. State what parts of the above were used by you of the

old machine saved from the fire in refitting the box-trimmer machine. Were any of the first used of the old parts?

(Objected to as incompetent.)

264 A. There were parts of the mechanism of the adjustable and self-adjustable cutter; the self-adjusting hanger and adjustable hanger, steel steps, and spindle pulleys; the spindles themselves were saved, but not used; the nuts on the spindles; that is all of what I have spoken of as the most important part of the invention.

And as to the second, which I call the carrier, that was not used or made by me; Smith took the one from the machine that was not burned and used it on this machine that we repaired.

As to the third, the driving mechanism was new, with the exception of the two shaft boxes.

As to the fourth, the adjustable guides were made new and the gauge for bearing against the work was made new.

362 X Q. Now, state if the machinery, or the parts which had to be made new and refitted for this box-trimmer, were not more important than the parts you have just described as having been used by you in the construction of the said machine.

(Objected to as incompetent and calling for the opinion of a patent expert.)

A. I don't think they are more important.

363 X Q. Do you not think they are equally important in the construction of the machine?

(Same objection.)

A. I don't know as they are.

364 X Q. Did you not use new cutter heads and their connections in the repairing?

(Objected to.)

A. I had nothing to do with new cutter heads or new cutters.

365 X Q. Who put them in?

A. I don't know.

366 X Q. Have you not stated that there were certain cutter-heads made by other parties put in?

A. I have; they were made by Mr. Tidey, and I saw them in the machine at Smith's shop afterwards, but don't know who put them in.

367 X Q. Did you put in the spindles?

265 A. I did not; their attachments; their attachments were used with the exception of the cutter heads.

368 X Q. Do you regard the adjustable and self-adjusting cutter distinct from the cutter heads or not?

(Same objection and as calling for opinion of a patent expert.)

A. I should say they were one, because one can't be used without the other; they are composed of several separate parts.

369 X Q. So when you speak of the most essential part of this machine, then you regard the cutter heads as part of the adjustable and self-adjusting cutters?

(Same objection.)

A. They are part of them; they have to be connected together to be used.

370 X Q. Do you find one of the parts that you used in repairing named in the 8th claim of the Myers patent, to which I called your attention?

A. There is none named in the 8th claim as used by me in repairing.

371 X Q. Look at the first claim in that letters patent and say if any of the parts used by you in repairing that machine were saved from the fire, as in the first claim?

A. There is nothing there that was used by me which was saved from the fire.

372 X Q. Was the machine known as the box-trimmer and used by Smith before the fire so constructed that it embraced a washer which was used for a guide?

(Same objection; also as having been already answered.)

A. I don't think that it was used as a guide; it contained a loose washer, but it was not used as a guide, in my opinion; it was used as a gauge to bear against the work.

373 X Q. Do you know whether Smith, the defendant, has any of the old iron on hand from that fire or whether it has been sold?

266 A. I don't know that he has any on hand; I think it was sold. I believe it was taken away from his place, taken to a large shed, and after the adjusters were through with it taken to a second-hand dealer, who bought it all. I don't know what he paid for it.

374 X Q. Do you know whether Smith had any portion of these machines which were injured refitted or used after the fire except what you did or your firm; and, if so, by whom was it done?

A. I have no knowledge of his having anything done except what our firm did.

Adjourned to Tuesday, June 19th, 1883, at 1 p. m.

FRIDAY, *June 22d*, 1883.

Hearing resumed.
Same appearances.

Cross-examination of THOMAS L. SMITH resumed by Mr. KINGSLEY:

375 X Q. Will you state about how long you have been familiar with and engaged in mechanism?

(Objected to as already answered.)

A. Somewhere about twenty-five years.

376 X Q. How long in the city of New York?

A. Since 1861.

377 X Q. Will you now state whether you had ever seen or known of any mechanical device substantially like the Myers box-trimmer until you became acquainted with that invention?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I had never seen any machine like that for that purpose constructed in that way; it was the first machine I had seen for the purpose of trimming boxes.

378 X Q. Look at the Myers patent, in which he sets forth
267 the device for the nail-feeding machine, and state what you regard as the most important feature in that machine.

(Same objection, and that witness is not an expert in patents.)

A. I should consider the endless nail-conveyer about the most important part of it.

379 X Q. What do you regard as the next important part of that machine?

(Same objection.)

A. I should say the traction pulley or pulleys and their shafts.

380 X Q. Do you regard them as one thing.

A. Yes; one is no use without the other.

381 X Q. Do you say one cannot be used without the other?

A. If you have a pulley and no shaft to put it on you can't use it.

382 X Q. What do you call the third important part of the nail-feeder? Look at the drawing and patent.

(Same objection.)

A. I should say the frame-work for supporting the endless chain.

383 X Q. And what after that?

(Same objection.)

A. The receptacles for the nails.

384 X Q. What is the next?

(Same objection.)

A. The ratchet and pawl for driving the apparatus; that is about all of it.

385 X Q. Is that all?

A. That is about all.

386 X Q. Was every one of the endless nail-conveyers broken, and was $\frac{2}{3}$ or more of each made new?

(Objected to as already answered.)

A. There were parts of each one broken, and there was not more than $\frac{2}{3}$ of each one made new.

387 X Q. Were the traction pulleys and their shafts made new?

(Same objection.)

268 A. There was none of them made new.

388 X Q. Were any new pulleys or shafts used not saved from the fire?

(Same objection.)

A. Not that I know of.

389 X Q. Was the frame-work for supporting the endless chain broken up in each machine and substantially destroyed by the fire, and were they made new?

(Same objection.)

A. The main feature of each machine were destroyed and made new.

390 X Q. How was it with the receptacles?

(Same objection, and also incompetent.)

A. A part of them were destroyed and made new; I should think four or five.

391 X Q. On how many of these machines were the receptacles destroyed?

A. On four, as near as I can remember.

392 X Q. Were the others not destroyed—so injured as to require to be refitted or repaired?

(Same objection.)

A. There had to be new springs put in all of them.

393 X Q. What was the injury to the ratchet and the pawls in these feeders, and how far were they injured?

(Same objection.)

A. Those were not injured of any account at all; cleaned them and put them on again; I think they were all saved.

394 X Q. Will you state if you have ever known of any invention substantially like Myers' nail-feeder until you became acquainted with that invention made by him.

(Objected to as incompetent, irrelevant, and immaterial.)

A. No.

395 X Q. Were there any parts of the Myers nail-feeder which you regarded as new or which you now regard as new? If so, state what they are.

(Same objection.)

269 A. The nail-feeder was used for the purpose for which it was designed.

396 X Q. Is there not some particular part which you think was used mechanically, aside from the whole thing?

(Same objection.)

A. The endless chain, constructed to have sockets to hold the nails, is new.

397 X Q. Look at drawing and state if the lever, the ratchet, and the pawl are not a part of the nail-feeder—part of the invention?

A. Certainly they are.

398 X Q. Was not that made in part new in repairing the machine?

A. As near as I can remember, they were saved in all of them.

399 X Q. You regard that rod connected with the nailing machine as a part of the nail-feeder, do you not?

(Objected to; patent speaks for itself.)

A. It is a part of the nail-feeder. Its office is to operate the nail-feeder.

400 X Q. And were those repaired in any way?

(Same objection.)

A. They were simply straightened out.

401 X Q. Do you regard these patents of Myers as being valuable patents, and have they been so within your acquaintance with him?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I did at one time consider them valuable patents. It was before better ones came into use. It was before I got up one that I think is better. I haven't made any money out of it yet; haven't sold enough of them yet.

402 X Q. Was not Myers' machine the best in the market at the time that you were acting foreman in making them, in your opinion?

(Same objection.)

270 A. I think they were for feeding large, coarse nails. The foregoing relates to the nail-feeder. I did not include the word box-trimmer.

403 X Q. State as to the box-trimmer at the time you were acting as foreman and up to the time of the fire in Smith's shop.

(Same objection.)

A. It was the best from the fact that I don't know of any other being in the market at that time. There is no other in the market now as I know of.

404 X Q. When you were with Morgan & Co. as foreman it embraced the period of Myers introducing these machines, did it not?

(Same objection.)

A. It did.

405 X Q. And was there not a good demand for those feeders and box-trimmers at that time?

(Same objection.)

A. We made quite a number of them; don't remember how many.

406 X Q. About how many were made, as near as you can remember, during the time you were with Morgan & Co. of the box-trimmer and of the box nailing machine?

(Same objection.)

A. As near as I remember, we made, I should say, about six trimmers, probably twenty-five nail-feeders, as near as I remember.

407 X Q. Do you not know that the demand for each machine has increased very much since that time, and have you not been so informed?

(Same objection.)

A. I have been informed so.

408 X Q. You have been in Myers' shop frequently since you were with Morgan & Co. and seen them building these machines from time to time?

(Same objection.)

A. I have been there two or three times. I have seen the machines being built there.

409 X Q. Look at Myers' letters patent for box trimming machines and state if there is any part thereof which you call new, mechanically. And, if so, what part?

271 (Same objection, and also as calling for the opinion of a patent expert.)

A. I don't know as I find any part new, except it may be the adjustable bars for guiding the box, holding it down.

410 X Q. Is that the only part, so far as you can say, is new, mechanically?

A. I have never seen anything like that for that purpose—the carrier—that is not new.

411 X Q. The combination of the carrier with the other parts for moving the boxes to the cutter—is not that combination new?

(Same objection.)

A. That is new for the purpose of carrying the box to the cutter, so far as I know, but it has been used for carrying other materials to the cutter besides boxes, as far as I understand the combination. I don't understand much about combination in patents. I am not an expert in patents.

412 X Q. Have you ever seen a machine that used a self-adjusting cutter or gauge to bear against the work to limit the cutting of the blade in trimming boxes?

(Same objection.)

A. I have never seen any.

413 X Q. Have you ever seen a machine up to the time of Myers' invention that had the combination of a supporting frame, having a table or having a chute and guards, a self-adjusting cutter, an adjustable cutter, a carrier, self-adjusting guides, and driving mech-

anism, such as used in Myers' box-trimmer, and used for the purpose of trimming boxes?

(Same objection.)

A. I have not seen any.

414 X Q. Had you up to that time ever seen any machine that had that combination of all the parts named in the previous question?

(Same objection.)

A. I have no recollection of any having all those parts.

272 Redirect by Mr. CHILDS:

415 Q. Is there anything new in the ratchet and pawl as used as part of the operating mechanism of a machine?

A. Nothing new, as I know of; known and used for many years.

416 Q. Are you accustomed to the examination of patents and the various claims or combinations contained in them?

A. I am not.

417 Q. State what, if any, experience at all you have had in that matter.

A. What I have had in this suit comprises all my experience in patent suits.

418 Q. Have you ever testified before in a patent case?

A. I have not.

419 Q. Where are the cutters and cutter heads and spindles which belong to the box-trimmer that was injured in the fire and were saved and brought to your shop with the machine?

(Objected to as immaterial.)

A. They are here before me, with the exception of the cutters; there are no cutters here.

420 Q. What are these I now show you?

A. They are the two spindles, with one cutter head complete, and a part of another, which belonged to the Myers box-trimmer, which were saved from the fire. They are the spindles that were in the fire. They came to my shop in the hangers. They had on them the pulleys for driving them and their steps, just as they were in the machine before being burnt.

(Complainant's counsel moves to strike out answer on the ground of objection, and also as introducing new testimony on the rebuttal and not being in rebuttal to any called out in the recross-examination.)

273 421 Q. Where is the other portion of one of the cutter heads which is missing?

(Objected to as immaterial if it is not used in the repairing; also as not being in rebuttal.)

A. There was something else made out of it in my shop for my own purpose; the cutters were thrown in the scrap; they could have been used if they had wanted to by retempering them.

422 Q. Could this missing part of the cutter head also have been used?

(Objected to for the same reason as above.)

A. It could.

423 Q. Are these spindles and cutter heads shown you in the same condition and state now that they were in when they were received by you at your shop with the rest of the machine?

A. When I received them they were bent and blackened with fire. Before bringing them down here I had an apprentice boy polish them a little so they would be a little cleaner to handle.

424 Q. With the exception of polishing them a little, are they in the same condition that they are in when you received them after the fire?

A. They are.

(Defendant offers them in evidence, and they are marked Defendant's Exhibits Spindles and Cutter-Heads "Y" and "Z.")

(Objected to as immaterial.)

425 Q. With the exception of tempering the cutters, were they in condition to be used again?

(Objected to as immaterial and irrelevant.)

A. They were.

(Motion to strike out answer.)

426 Q. When you received these Exhibits "Y" and "Z" and the cutters alluded to what indications did they bear that they had been in a fire?

A. Being bent and black and rusty. The cutters were blackened by fire and temper taken out of them—annealed.

427 Q. What is this I now show you?

A. That is called the Tidey patent cutter head.

274 428 Q. Is that the kind of cutter head which was substituted in place of Myers' on the box-trimmer you repaired?

A. That is one of the cutter heads.

429 Q. How does that differ from the cutter used by Myers?

(Objected to as immaterial and not in rebuttal.)

A. It differs in the manner of its construction and in having twice as many cutters as Myers'.

(Counsel moved to strike out answer.)

430 Q. Do you regard that cutter as better or more effective for use than Myers'?

(Objected to as immaterial.)

A. I should think it was more effective from the fact of its having more cutters.

(Defendants' counsel offers it in evidence, and it is marked Defend't's Ex. Tidey's Cutter "2.")

(Objected to as immaterial and not being in rebuttal.)

Recross by Mr. KINGSLEY:

431 X Q. Do you know that the two spindles here produced of your own knowledge were in the fire at Smith's shop, and the cutter heads?

A. I didn't see them in the fire.

432 X Q. Nor till they were brought to your shop, did you?

A. No.

433 X Q. You cannot swear that — the cutter head and spindles that belonged to the Myers trimmer at the time of the fire at Smith's shop, can you?

A. I don't swear they were, but I believe they are.

434 X Q. Did defendant himself bring these spindles and cutter heads to your shop himself?

A. He did not; they were brought there by his foreman.

275 435 X Q. Where have they been kept ever since?

A. They have been lying under one of the benches in my shop since they were brought there.

436 X Q. How often have you seen them during that time?

A. I can't say exactly; probably fifty times; every time I went there looking for anything; laying there among those odds and ends generally.

437 X Q. Did defendant's foreman deliver these pieces to you personally?

A. Both myself and partner were present at the time, I believe.

438 X Q. How much machinery was delivered at that time?

A. I don't know; I don't remember; came down with some other stuff he delivered; everything he had saved belonging to the trimmer was brought there at one time.

439 X Q. Were you present there and took notice of every piece delivered?

A. I didn't take particular notice of every piece at the time.

440 X Q. How long after before you examined the pieces remaining of that box-trimmer?

A. I can't say exactly; laid in the shop some few weeks.

441 X Q. Before you examined the several pieces you could not have identified this machinery, could you, as having been delivered by the foreman of defendant, of your own knowledge?

A. I think I could; I had it all carefully laid away by itself, and there it remained until we got ready to go to work on it; we had no other of the same kind in the shop.

442 X Q. Had you not had similar pieces up to this time in your shop?

A. I have had similar pieces, doing slight repairs once or twice, maybe; I don't remember exactly.

443 X Q. Have you not made any repairs on the other box-trimmer made by defendant at any time?

276 A. I have; slight repairs; I put new babbitt metal on the spindle boxes; similar spindles to those; that was, I think, after the fire; could not say exactly how long; maybe a couple of months; brought there by a foreman.

444 X Q. How long did they remain there before you made the rebabbitting?

A. Maybe three or four hours; along there; a short while.

445 X Q. Can you swear that these are the spindles delivered by the foreman at your shop?

A. I swear that those are the spindles that the foreman delivered at my shop.

446 X Q. There never was a box-trimmer as such made by Myers delivered to you by defendant for repairs, was there?

A. Yes; there was.

447 X Q. You swear, then, it was the box-trimmer made by Myers, and that it was a machine such as used and run by defendant, do you?

A. There was such a machine as that delivered to me for repairs—machine all complete; that was shortly after the fire.

448 X Q. Had that machine been in the fire at Smith's place?

A. It had not.

449 X Q. What did you do to it?

(Objected to as immaterial and incompetent.)

A. Some slight repairs; cut off some parts and put in new babbitting metal in the boxes.

450 X Q. Take any parts out from it?

A. I believe we did; we took out that back part of the machine where the chute is attached to the table—an extension of the table; that was sawed off and taken away; that was all that was done, I believe; that was sawed off to make the chute longer, I believe.

451 X Q. Was there a longer carrier put on both machines, or either, at that time or before that time or since?

277 A. I believe they took the carrier of that machine and lengthened it out; could not say how far; all of 30 feet, I guess; I do not think more than 30.

452 X Q. Was there a long carrier used on the box-trimmer that burned?

A. I really don't know about that.

453 X Q. What would it cost to make that long carrier, such as you saw?

(Objected to as above.)

A. I couldn't tell exactly; might cost 25 or 30 dollars. There was a carrier on the machine that burned up—frame was made of wood—with leather belts.

454 X Q. Did those long carriers have spurs on for the purpose of carrying the box, the same as Myers'?

A. I believe they do.

455 X Q. Why were these two spindles, Defendant's Exh., and cutter heads left out in making the repairs of the box-trimming machine, as you say?

A. Mr. Smith wished to use that cutter head—Tidey's—and as for the spindles, I preferred to make new ones than fix up the old ones, although I could have used them. I consulted with Smith's fore-

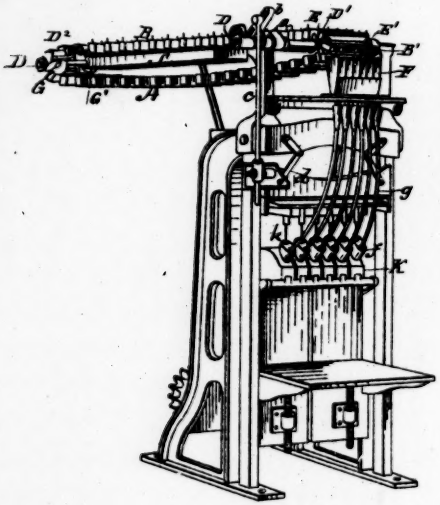
2 Sheets—Sheet 2.

F. MYERS.

Nail-Feeding Machine

No. 215,153. Patented May 6, 1879.

Fig. 3.



No. 323.
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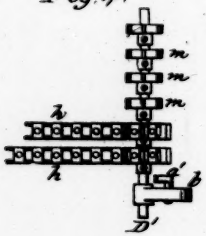
Smith
} p. 250

Fig. 4.



Witnesses:
E. E. Masson
[illegible]

Inventor
Frederick Myers,
By T. C. Woodward,
Atty.

2 Sheets—Sheet 1.

F. MYERS.

Nail-Feeding Machine.

No. 215,153. Patented May 6, 1879.

No. 323. Myers & Smith } p. 279

Fig 1

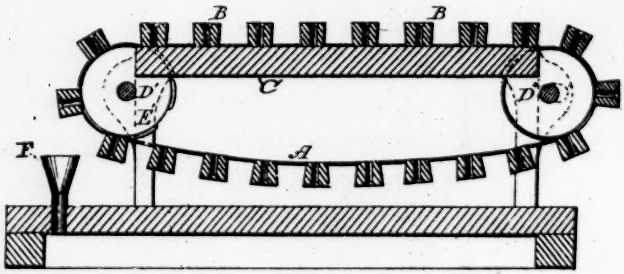
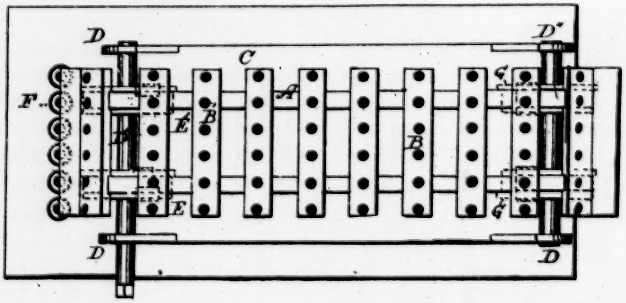


Fig 2



Attest.

Samuel Whitehead

Oliver Lightowler.

Inventor.

Frederick Myers

by A. B. Woodward,

Attorney.

man about them; he said go ahead and make new ones; made them just like these.

456 X Q. Did you cast them yourself or get them cast by some one else?

A. I did not; I bought the bar steel from a steel house in New York, what is called machinists' steel, and made them myself.

457 X Q. Have you ever seen Tidey cutter head work in the machine?

A. I have seen it work.

458 X Q. Does it perform the same office as the Myers cutter head in the machine substantially?

A. It does.

459 X Q. Does it do substantially the same work in the machine?

A. It does.

278 460 X Q. State what pieces in the Myers feeding machine were cast in the repairing of the same.

(Objected to as already answered and not in rebuttal.)

A. The endless nail-conveyer—they were castings; also the frames, and the supports for the frames and the nail receptacles; in fact, it is nearly all cast iron, except the shaft and some small pins and bolts.

461 X Q. And were all the parts made new by you; made in moulds and made new as castings?

(Same objection.)

A. Nearly all of it was, I think, and all the important parts which were made new were cast by Brade Bros., under either my direction or my partner's.

Redirect by Mr. CHILDS:

462 Re-D. Q. Were these spindles, cutters, and cutter heads, Defendant's Exhibits "Y" and "Z" and "2," attached to the other part of the box-trimmer which was brought to you to be repaired, and were they so attached when you examined the machines and commenced the repairs?

A. With the exception of Exhibit "2," they were.

463 Re-D. Q. Have you any doubts that Exhibits "Y" and "Z" constituted parts of that machine which was in that fire?

A. I have no doubt of it.

THOMAS L. SMITH.

(Here follow diagrams marked pp. 279 & 280.)

281

UNITED STATES PATENT OFFICE.

FREDERICK MYERS, of New York, N. Y.

Improvement in Nail-Feeding Machines.

Specification forming part of Letters Patent No. 215,153, dated May 6, 1879; application filed August 2, 1877.

To all whom it may concern:

Be it known that I, Frederick Myers, of New York, in the county of New York, in the State of New York, have invented a new, useful, and important nail-feeding machine, as described in this specification.

My invention consists of a nail-feeder having, essentially, an endless or belt receiver and conveyer, to be supported and operated by suitable mechanism, and adapted to receive nails independently, convey them uniformly, and deliver them separately to the nail-driver or drivers, or support or supports, or conduit or conduits of a nailing-machine.

It consists, further, in such a nail-feeder made in sections, adapted for the operation of one or more of the sections independently of the other sections.

It consists, further, in such a nail-feeder combined with the nail-driving mechanism of a box-nailing machine.

Figure 1 is a longitudinal section of a nail receiver and conveyer embodying my invention detached from driving mechanism and from a nailing-machine. Fig. 2 is a top view of the same. Fig. 3 is a perspective view of the nail-feeder combined with the driving mechanism of a box-nailing machine. Fig. 4 is a partial view of the sectional nail-feeder.

A is a receiver and conveyer, having transverse bars B, provided with holes or sockets B′, of a sufficient size to receive a nail easily head foremost. The number and arrangement of the holes or sockets may be varied.

C is a platform to support the receiver and conveyer, and having bearings D, which support the shafts D′ D″. To the shaft D′ are securely fastened two toothed traction-pulleys, E E′, the teeth being so arranged as to receive the transverse bars, to prevent them from slipping when they are drawn forward by the traction-pulleys. The shaft D″ has fixed to it two plain supporting-pulleys, G G.

The receiver and conveyer is moved intermittingly by suitable mechanism—as a ratchet, *a*, attached to the end of shaft D′, and operated by a pawl, *a′*, attached to an arm, *b*, loosely fitted to the shaft, and which is moved intermittingly by means of a connecting-rod, *c*, attached to the reciprocating head *d* of a nailing-machine.

The teeth of the ratchet should be so adjusted that the shaft is only moved when the head of the nailing-machine moves upward, and then only sufficiently to move the receiver and conveyer one bar, that being the time when the nail-supports *f* are empty and the nail-driver *k* withdrawn from them.

The platform supporting the receiver and conveyer is suitably adjusted with relation to a nailing-machine.

The machines being put in motion, and nails being placed singly, head foremost, in the holes or sockets in the receiver and conveyer, the bars will overturn at regular intervals and deliver the nails point foremost to be driven.

Nails may be supplied by an attendant as fast as they are driven, so that the feeding will be continuous while the machines are in operation.

The amount of nails to be used may be varied by omitting to place nails in certain holes or sockets.

The receiver and conveyer may be made in sections *h*, each section operated by independent pulleys *m*, suitably connected to the shafts, so that one or more sections can be employed as the nails are required independently of the other sections.

The details of construction and operation may be varied without departing from my invention.

(O[illegible]ing-machine shown I make no claim to. Further, I make claim in this case to the particular connecting operating devices ar[illegible]n and described between the nail-feeder and the nailing-machine; but I may claim them in a subsequent case.

I claim—

1. An endless nail receiver and conveyer having transverse bars provided with holes or sockets for the nails, in combination with a toothed traction pulley or pulleys and independent belt-supporting mechanism, substantially as described.

2. An endless nail receiver and conveyer having transverse bars provided with holes or sockets for the nails, in combination with a toothed traction pulley or pulleys, a supporting pulley or pulleys, and independent belt-supporting mechanism, substantially as described.

282 3. An endless nail-feeder consisting of two or more sections, adapted by mechanism for the operation of one or more of the sections independently of the other sections, each section adapted to receive nails separately, convey them uniformly, and deliver them separately point foremost to the nail driver or drivers of a nailing-machine, substantially as described.

4. An endless nail-feeder having transverse bars provided with holes or sockets for the nails, in combination with the nail-driving mechanism of a box-nailing machine to receive the nails separately, convey them uniformly, and deliver them separately to the nail driver or drivers, substantially as described.

FREDERICK MYERS.

Witnesses:

SAMUEL WHITEHEAD.

OLIVER LIGHTOWLER.

283 No. 215,153.

The United States of America to all to whom these presents shall come:

Whereas Frederick Myers, of New York, New York, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in nail-feeding machines, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to be granted unto the said Frederick Myers, his heirs or assigns, for the term of
284 & 285 seventeen years from the sixth day of May, one thousand eight hundred and seventy-nine, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this sixth day of May, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States of America the one hundred and third.

[L. S.] A. BELL,
Acting Secretary of the Interior.

Countersigned:
H. E. PAINE,
Commissioner of Patents.

(Here follow diagrams marked pp. 286 and 287.)

288 UNITED STATES PATENT OFFICE.

FREDERICK MYERS, of New York, N. Y.

Improvement in Machines for Trimming Wooden Boxes.

Specification forming part of Letters Patent No. 201,822, dated March 26, 1878; application filed January 8, 1878.

To all whom it may concern:

Be it known that I, Frederick Myers, of New York, in the county of New York, in the State of New York, have invented certain new, useful, and important improvements in machines for trimming packing-boxes, and the like, as shown, described, and claimed in this specification.

In the manufacture of packing-boxes, although the material may be cut with great care, the edges of the boxes usually require trimming. This is commonly done by hand with a plane; it has been attempted by machinery, but with only partial success. The cutters were not adapted to various sizes of boxes; the boxes had to be

Fig. 1.

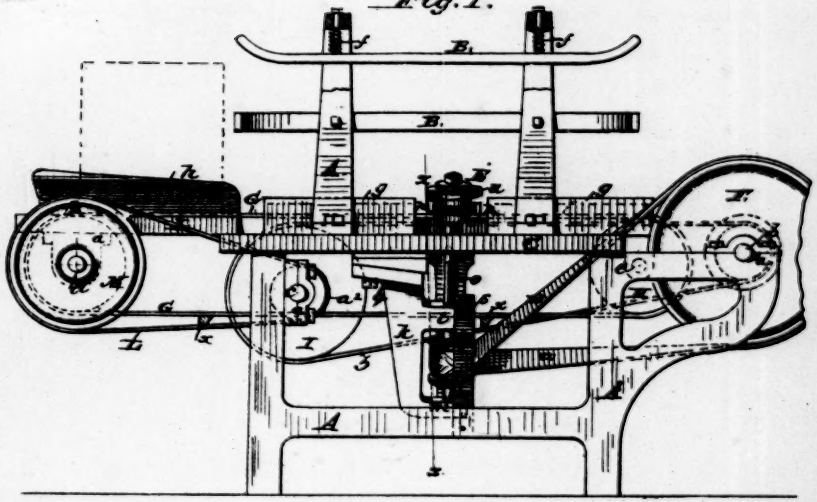
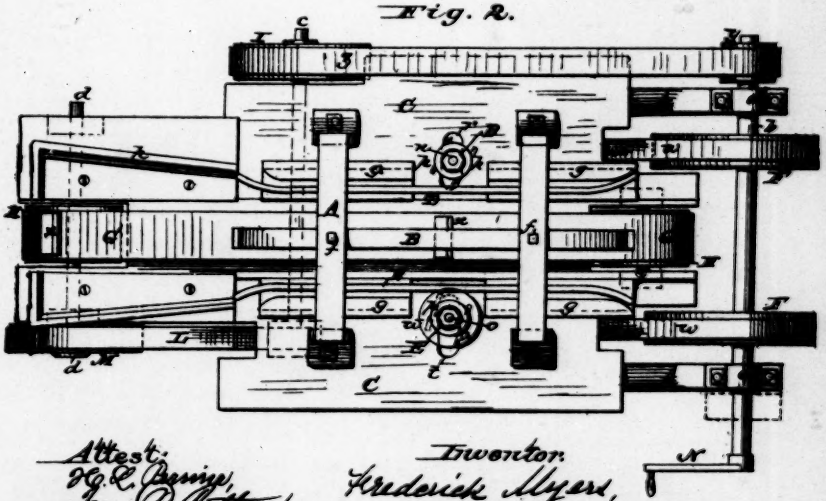


Fig. 2.



Attest:
H. L. Bevins,
Jno. D. Patten.

Inventor:
Frederick Myers,
By. A. C. Woodward,
Atty.

Fig. 3.

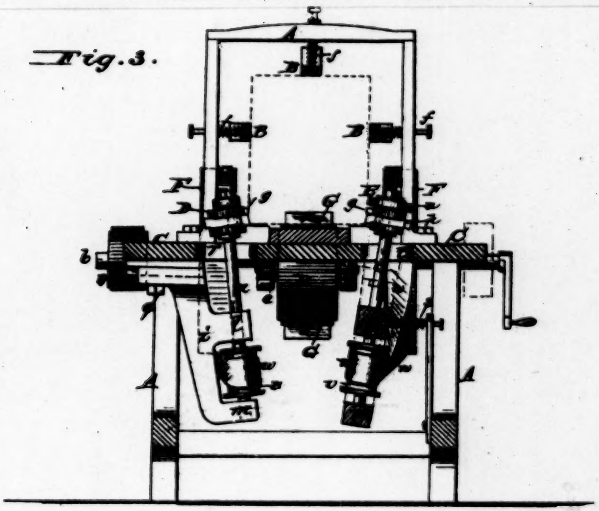
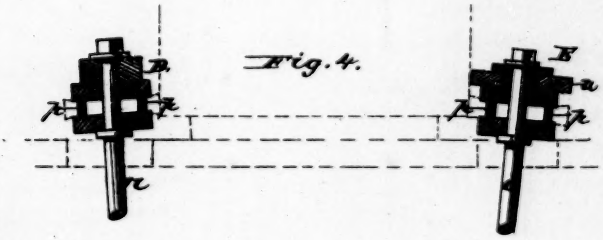


Fig. 4.



Attest:
H. R. Burns,
Jno. D. Patten,

Inventor.
Frederick Myers,
By. A. C. Woodward,
Atty.

moved by hand through the machine, and if the tops were not on the boxes only one edge could be trimmed without turning the boxes.

To overcome these difficulties and objections and thereby facilitate the work of trimming boxes and materially reduce the cost of the same is the object of my improvements.

My invention consists of a machine having a supporting frame, a self-adjusting cutter, self-adjusting guide or guides, a carrier, and operating mechanism.

It consists, further, in a self-adjusting cutter, having a gage to bear against the work.

Figure 1 is a longitudinal vertical section of a machine embodying the invention; Fig. 2 is a plan view thereof; Fig. 3 is a transverse vertical section of the same, and Fig. 4 is an enlarged view of the cutters.

A is a supporting frame, having bearings *a* for the shafts *b*, *c*, *d*, and *e*. B are yielding box-guides, rendered self-adjusting by sliding rods and retracting springs, *f*, to conform to boxes of different sizes, and preferably curved at their ends for the easy entrance and exit of the boxes. C is a table having fixed guards, *g*, and a centering chute, *h*, tapering toward the guides and guards, to give the boxes a proper start towards the cutters. D and E are the cutters, supported by arms, *i* and *k*, each of which has two bearings, *l* and *m*, for the spindles *n* and *o*. The cutters each have one or more blades, *p*, and are placed at an angle to give a bevel cut to the edges of the boxes and avoid nails that may have turned outward in the sides of the boxes. The cutter D is adjustable by means of a set-screw and a slide, *q*, which connects the arm *i* to the frame or table and a slot, *r*, in the table. The cutter being properly set, its blades are protected by the guards *g*. The cutter E is self-adjusting by means of the arm *k*, pivoted to the frame or table so as to yield to pressure on the spindle, a sliding rod, and retracting spring, *s*, and a slot, *t*, in the table. The cutter being self-adjusting has a loose collar or other gage, *u*, to press against the boxes as they pass to limit the cutting of the blade or blades and prevent injury to the boxes. The cutters are operated by small pulleys *v* and *v* on spindles *n* and *o* cross-belts *w* and *w*, and large drums F and F on shaft *b*.

G is a box-carrier, passing over and under the table, to carry the boxes between the cutters and the guides, and having projections, *x*, at intervals to prevent the boxes from slipping back. The box-carrier is supported on two drums, H and H, of equal size, one on shaft *d*, the other on shaft *e*, and it is operated by a fixed pulley, *y*, on shaft *b*, direct belt *z* to large drum I on shaft *c*, fixed pulley a^2 on shaft *c*, direct belt L to large drum M on shaft *d*, which imparts motion to the box-carrier drums H and H.

To trim the upper edges of the boxes as they pass through the machine similar cutters may be supported and driven above the cutters D and E, thus to trim the top and bottom edges at the same time.

Power may be applied by hand by means of a crank, N, or by steam or otherwise by means of a belt or gearing.

The details of construction and operation, as described, may be varied without departing from my invention, and similar work to trimming boxes may be accomplished thereby.

I claim—

1. A self-adjusting cutter having a gage to bear against the work to limit the cutting of the blade, substantially as shown and described.

2. The combination of a self-adjusting cutter having a gage to bear against the work, a carrier, and driving mechanism substantially as shown and described.

3. The combination of a self-adjusting cutter having a gage
289 to bear against the work, an adjustable cutter, a carrier, and driving mechanism, substantially as shown and described.

4. The combination of a self-adjusting cutter having a gage to bear against the work, an adjustable cutter, a self-adjusting guide, and driving mechanism, substantially as shown and described.

5. The combination of a self-adjusting cutter having a gage to bear against the work, a self-adjusting guide, a carrier, and driving mechanism, substantially as shown and described.

6. The combination of a self-adjusting cutter, an adjustable cutter, a carrier, self-adjusting guides, and driving mechanism, substantially as shown and described.

7. A self-adjusting cutter having a gage to bear against the work, an adjustable cutter, a carrier, a self-adjusting guide or guides, and operating mechanism, substantially as shown and described.

8. The combination of a supporting-frame, a table having a chute and guards, a self-adjusting cutter, an adjustable cutter, a carrier, self-adjusting guides, and driving mechanism, substantially as shown and described.

In testimony whereof I hereunto set my hand, at the city of New York, in presence of two attesting witnesses, this 28th day of December, A. D. 1877.

FREDERICK MYERS.

Witnesses:
O. LIGHTOWLER.
S. R. WHITEHEAD.

290 No. 201,822.

The United States of America to all to whom these presents shall come:

Whereas Frederick Myers, of New York, New York, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in machines for trimming wooden boxes, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said

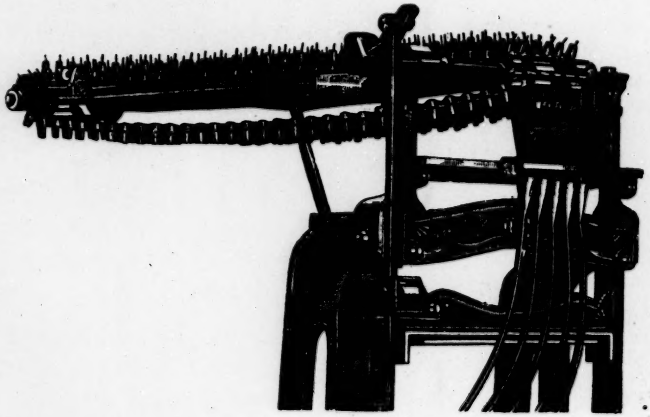
293

Eq. E B.L.B
Dec 26 1882

New Improved Nailing Machine

AND

Nail Feeder.



Frederick Myers, his heirs or assigns, for the term of seventeen years from the twenty-sixth day of March, one thousand
291 eight hundred and seventy-eight, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the one hundred and second.

[L. S.] A. BELL,
Acting Secretary of the Interior.

Countersigned:
ELLIS SPEAR,
Commissioner of Patents.

292 EXHIBIT "D." B. L. B. Dec. 4, '82.

GREENPOINT, L. I., *Jan'y 10th*, 1878.

Mr. F. Myers.

D'R SIR: You will please furnish me six (6) nail-feeders, six (6) counter-shafts to operate six nail machines, put up on your new system for making boxes; also two (2) box-trimmers with counter-shaft, for the sum of thirteen hundred and fifty dollars.

E. C. SMITH.

If not called for within ten days please return to

EDW. C. SMITH,
Packing Box Manufacturer,
420 to 434 Oakland St.,
GREENPOINT, L. I.

EX. D².
B. L. B.
Dec. 4, '82.

(Here follows diagram marked p. 293.)

294 COMP'T'S EX. F. B. L. B. Mar. 17, '83.

NEW YORK, *Oct.* 22, 1880.

This is to certify that E. C. Smith, of Greenpoint, has authority and permission to run three nail-feeders, F. Myers' patent, in his box factory, 420 to 434 Oakland St., Greenpoint.

F. MYERS,
Per O. LIGHTOWLER, *Att'y.*

295 RESPONDENT'S EX. No. 1. B. L. B. Mar. 9, '83.

GREENPOINT, *September 8th*, 1881.

Mr. E. C. Smith to Smith & Doig, Dr.,
Engineers & machinists, No. 24 Franklin street, Brooklyn, N. Y.

1881.

May 14 to Sept. 6.	Repairing 9 nail-feeders, 742 hours' time, @ 45c.	$296 80
	1,326 lbs. castings, @ 4c.	53 04
	Sheet steel	4 50
	Wro't iron, 18 lbs., @ 5c.	90
	Bolts	2 00
	Painting, @ 50c.	4 50
		$361 74

Rec'd payment.

SMITH & DOIG.

296 RESPONDENT'S EX. No. 2. B. L. B. Mar. 9, '83.

GREENPOINT, *May* 29, 1882.

Mr. E. C. Smith to Smith & Doig, Dr.,
Engineers & machinists, No. 24 Franklin St., Brooklyn, N. Y.

1882.

May —.	To repairing box-trimmer, 1 frame	$14 14
	141 lbs. castings, @ 4c.	5 64
	13 " steel, 17	2 21
	6 " Babbit metal, 15	90
	Forgings	65
	8½ lbs. wro't iron, 5	45
	1 pull-y, 17″x3″x1″	2 80
	2 " 16″x3″x1″	5
	1 " 8″x4½″x1	1 70
	2 " 8″x3½″x1, T. & L.	3 96
	18 lbs. cold-rolled shafting	2 70
	2½″x2½″ bolts, 16c.; 20½″ washers, 30c.	46
	Paint, 50c.; 157½ hrs. time, 40c.—63.00	63 40
		$104 09

Rec'd payment.

SMITH & DOIG,
JONES.

297 Stated Term.

FREDERICK MYERS *vs.* EDWARD C. SMITH.

Present: Hon. Chas. L. Benedict, district judge, holding the court.

Cause called; hearing ordered. V. Wright Kingsley, for complainant; Childs & Hull for, defendant. Cause argued & submitted; decision reserved.

Opinion, October 3, 1884.

BENEDICT, *J.*:

The bill must be dismissed and with costs.

298 At a stated term of the circuit court of the United States for the eastern district of New York, held at the court-rooms, in the city of Brooklyn, on the 14 day of October, 1884.

Present: Hon. Charles L. Benedict, district judge, holding the court.

FREDERICK MYERS *vs.* EDWARD C. SMITH.

This cause having duly come on to be heard upon the pleadings and proofs taken and filed herein, and the cause having been fully argued by counsel for the respective parties, and due deliberation having been had thereupon—

Now, therefore, it is ordered, adjudged, and decreed that the complainant's bill of complaint be, and the same hereby is, dismissed with costs to the defendant, to be taxed by the clerk.

CHAS. L. BENEDICT.

Endorsed: Final decree. Filed and entered October 15, 1884.

299 Circuit Court of the United States, Eastern District of New York. In Equity.

FREDERICK MYERS, Complainant and Appellant,

vs.

EDWARD C. SMITH, Defendant and Appellee.

To the honorable the Supreme Court of the United States:

The appeal of Frederick Myers, the above-named complainant and appellant, respectfully shows that on the 6th day of June, 1882, Frederick Myers, the above-named complainant, filed his bill of complaint in the circuit court of the United States for the eastern district of New York against the above-named defendant and the appellee to enjoin and restrain the said defendant and appellee
300 from infringing two certain letters patent of the United States, one granted to said complainant and appellant, dated the 26th day of March, 1878, and numbered 201,822, for improvement in machines for trimming wooden boxes, and the other granted to complainant and appellant and dated the 6th day of May, 1879, and numbered 215,153, for an improvement in nail feeding machinery connected with said box-making, and who is the exclusive owner thereof, and also praying for an injunction and account of profits and assessment of damages arising from said infringement; that a subpœna issued out of said circuit court — was duly served on the said defendant and appellee; that said defendant and appellee filed his answer to said bill of complaint, to which the complainant and appellant filed a general replication; whereupon such proceed-
301 ings were had in the cause that on the 14th day of October, 1884, a final decree was made and entered in said circuit

court, wherein it was in substance adjudged and decreed that the said bill of complaint be dismissed with costs, to be taxed by the clerk, and the same were taxed at the sum of $511.92 costs and were entered in said judgment, and complainant was given to the 12th day of November to file security, and which said judgment and decree is, as complainant and appellant is advised, erroneous and ought to be reversed.

Wherefore the complainant and appellant appeals from the whole and every part of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the
302 decree of the said circuit court and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the cause anew, and that the said decree of the circuit court and every part thereof may be reversed, or such other decree may be made as to the said Supreme Court shall seem just.

FREDERICK MYERS,
By his solicitor, V. WRIGHT KINGSLEY.

V. WRIGHT KINGSLEY,
Solicitor & of Counsel for Complainant & Appellant.

Allowed Nov 11, 1884.

CHAS. L. BENEDICT.

Endorsed: Appeal. Filed Nov. 11, 1884.

303 *Bond for Damages and Costs.*

U. S. Circuit Court, Eastern District of N. Y. In Equity.

FREDERICK MYERS *vs.* EDWARD C. SMITH.

Know all men by these presents that we, Frederick S. Burr and Robert Fyfe, as sureties, are held and firmly bound unto the above-named defendant, Edward C. Smith, in the sum of five hundred and eleven $\frac{92}{100}$ dollars, to be paid to the said defendant, his executors, administrators, or assigns; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 11th day of November, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas the above-named Frederick Myers has prosecuted his appeal to the Supreme Court of the United States from the United States circuit court for the eastern district of New York to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Frederick Myers shall prosecute his appeal to effect and answer all damages and costs if he shall fail to make his plea

good & shall pay to said obligee the money decreed to be paid in the final decree of said circuit court, including just damages for delay & costs and interest on this appeal *good*, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

FREDERICK S. BURR. [L. S.]
ROBERT FYFE. [L. S.]

Sealed and delivered and taken and acknowledged this 11 day of November, 1884, before me—

B. LINCOLN BENEDICT,
U. S. Commissioner.

UNITED STATES OF AMERICA, } ss:
Eastern District of New York, }

Frederick S. Burr, of the city of Brooklyn and State of New York, and Bobert Fyfe, of the city of New York, being duly sworn, severally depose and say and each for himself deposes and says that *that* he is worth the sum of ten hundred and twenty-four dollars over and above his just debts and liabilities.

FREDERICK S. BURR.
ROBERT FYFE.

Sworn to this 11th day of November, A. D. 1884, before me—
B. LINCOLN BENEDICT,
U. S. Com'r.

304 [Endorsed:] United States circuit court, eastern dist. of New York. In equity. Frederick Myers *vs.* Edward C. Smith. Supersedeas bond for damages and costs on appeal. Approved, defendants opposing, Nov. 11, 1884. Filed this 11th day of November, 1884.

305 UNITED STATES OF AMERICA, } ss:
Eastern District of New York, }

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered one to three hundred and four, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Frederick Myers, complainant, *vs.* Edward C. Smith, defendant, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, in the second circuit, this — day of September, A. D. 1885, and of the Independence of the said States the one hundred and tenth.

[The Seal of the Circuit Court, Eastern District of New York.]

B. LINCOLN BENEDICT, *Clerk.*

306 By the Honorable Charles L. Benedict, circuit judge, for one of the judges of the circuit court of the United States for the eastern district of New York.

To Edward C. Smith:

Whereas Frederick Myers has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the eastern district of New York made in favor of you, the said Edward C. Smith, and has filed the security required by law, you are are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the 2d Monday of October next to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Brooklyn, in the eastern district of New York, in the second circuit, the 11 day of November, in the year of our Lord one thousand eight hundred and eighty-four.

CHAS. L. BENEDICT.

307 [Endorsed:] U. States circuit court. Frederick Myers *vs.* Edward C. Smith. Citation. V. Wright Kingsley, solicitor & of counsel for appellant. Service of a copy of the within admitted Nov. 11, 1884. Childs & Hull, def't's att'y. Filed November 11, 1884.

Endorsed on cover: E. New York C. C. U. S. No. 323. Frederick Myers, appellant, *vs.* Edward C. Smith. Filed October 2, 1885.